

Message

From: Haris Alic [alic@freebeacon.com]
Sent: 5/30/2018 6:15:11 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Re: EPA Response to Rep. Kildee

Thanks!

On Wed, May 30, 2018 at 2:14 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

No to House Budget, but we did invite House Appropriations.

From: Haris Alic [mailto:alic@freebeacon.com]
Sent: Wednesday, May 30, 2018 11:54 AM

To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: EPA Response to Rep. Kildee

Hey Mike,

Just got your message. No worries, I totally understand. The letter you all sent in response will suffice. Can you at least confirm if Kildee's office was invited prior hand? Or if the summit was adequately promoted on the Hill?

-Haris

On Wed, May 30, 2018 at 10:21 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

That works for me. I'll call you then.

From: Haris Alic [mailto:alic@freebeacon.com]
Sent: Wednesday, May 30, 2018 10:20 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: EPA Response to Rep. Kildee

Sure, my number is 845-707-3932. What time works for you? I'm free around 10:30 am.

On Wed, May 30, 2018 at 10:13 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Hey Haris, do you have a phone number that I can reach you at to walk you through how the attendees registered for the event?

-----Original Message-----

From: Wilcox, Jahan

Sent: Wednesday, May 30, 2018 9:59 AM

To: Haris Alic <alic@freebeacon.com>

Cc: Abboud, Michael <abboud.michael@epa.gov>; Block, Molly <block.molly@epa.gov>

Subject: Re: EPA Response to Rep. Kildee

Adding our press team.

Sent from my iPhone

> On May 30, 2018, at 9:57 AM, Haris Alic <alic@freebeacon.com> wrote:

>

> Hi Jahan,

>

> My name is Haris Alic and I'm a writer with the Washington Free Beacon. My colleague, Elizabeth Harrington, shared your official response letter to claims made by Congressman Dan Kildee that his staff was purposefully blocked from attending the PFAS summit last week. I saw on your official list of organizations attending the summit that no members of Congress were listed. Were any invitations extended or did any attend?

>

> -Haris

Message

From: Boris Epshteyn [bepshteyn@sbgstv.com]
Sent: 5/25/2018 2:29:08 PM
To: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
CC: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]; Jonathan Helman [jrhelman@sbgstv.com]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: Re: Trump, Pruitt & Paris Accord ...

Thanks, good speaking with you just now.

We will pencil 10 - 11am on Wednesday for an interview at our studio and wait for your confirmation.

Best,

Boris Epshteyn

Chief Political Analyst

Sinclair Broadcast Group

(609) 529 - 9982

bepshteyn@sbgstv.com

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On May 25, 2018, at 10:22 AM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

Great. We can do 5-8 minutes taped interview and we will also send you data about we've reduced our CO2 footprint after the President's courageous decision. Will touch base next week. Have a great weekend.

From: Boris Epshteyn [<mailto:bepshteyn@sbgstv.com>]
Sent: Friday, May 25, 2018 10:20 AM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>

Cc: Ford, Hayley <ford.hayley@epa.gov>; Jonathan Helman <jrhelman@sbgstv.com>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>

Subject: Re: Trump, Pruitt & Paris Accord ...

Thanks, the interview will be taped, not live. So we would tape on Wednesday and run the Paris Accord segment on Friday.

Best,

Boris Epshteyn

Chief Political Analyst

Sinclair Broadcast Group

(609) 529 - 9982

bepshteyn@sbgstv.com

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On May 25, 2018, at 10:17 AM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

I am going to add Hayley regarding logistics for this interview with Sinclair. The anniversary will be Friday, June 1.

From: Boris Epshteyn [<mailto:bepshteyn@sbgstv.com>]

Sent: Friday, May 25, 2018 10:00 AM

To: Wilcox, Jahan <wilcox.jahan@epa.gov>

Cc: Jonathan Helman <jrhelman@sbgstv.com>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Ferguson, Lincoln

<ferguson.lincoln@epa.gov>

Subject: Re: Trump, Pruitt & Paris Accord ...

Hey Jahan,

This sounds great and thank you for reaching out!

Could we do the interview on Wednesday the 30th between 10 and 11am at our studios in Rosslyn at WJLA?

Jonathan Helman, copied, can work with you to lock in all details.

I would also be happy to catch up, maybe we can talk when you are here for interview and get something on the books?

Best,

Boris Epshteyn

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On May 25, 2018, at 8:41 AM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

Boris –

This is Jahan Wilcox with the EPA Press Shop. Curious if you had time to get coffee on Tuesday. We were curious – just kicking the tires here – if you would be interested in possibly doing an interview with Administrator Scott Pruitt next week about President Trump’s courageous decision to exit the Paris Accord. The anniversary will be on Friday, June 1. Please don’t share this idea outside this group.

Hope you have a safe Memorial Day weekend!

Jahan Wilcox
EPA
Strategic Communications Advisor

Personal Matters / Ex. 6

Work Email: wilcox.jahan@epa.gov

Message

From: Elizabeth Harrington [elizabeth@freebeacon.com]
Sent: 5/30/2018 4:21:18 PM
To: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]
CC: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Aaron Harison [harison@freebeacon.com]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: Re: Interview with Washington Free Beacon

No worries!

On Wed, May 30, 2018 at 12:19 PM, Ford, Hayley <ford.hayley@epa.gov> wrote:

He's running a little late so we'll probably be closer to 1PM. I apologize.

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator

Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Personal Matters / Ex. 6

From: Wilcox, Jahan
Sent: Tuesday, May 29, 2018 10:22 AM
To: Elizabeth Harrington <elizabeth@freebeacon.com>; Ford, Hayley <ford.hayley@epa.gov>
Cc: Aaron Harison <harison@freebeacon.com>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: RE: Interview with Washington Free Beacon

Yes.

From: Elizabeth Harrington [<mailto:elizabeth@freebeacon.com>]

Sent: Tuesday, May 29, 2018 10:05 AM

To: Ford, Hayley <ford.hayley@epa.gov>

Cc: Aaron Harison <harison@freebeacon.com>; Hewitt, James <hewitt.james@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>

Subject: Re: Interview with Washington Free Beacon

That works for me! Can send an email later today with the format. Would like to do normal interview followed by a couple Right and Righter-esque fun questions at the end, if the Administrator is okay with that.

--

Elizabeth Harrington
Senior Writer
Washington Free Beacon

On Tue, May 29, 2018, 9:58 AM Ford, Hayley <ford.hayley@epa.gov> wrote:

Hi all,

Would 12:45PM tomorrow work for you? As Jahan mentioned, we can set aside 10-15 minutes. Please let us know if this works and the exact # of your offices within the building.

Thanks!

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator

Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

From: Elizabeth Harrington [mailto:elizabeth@freebeacon.com]
Sent: Friday, May 25, 2018 12:43 PM
To: Unknown <harison@freebeacon.com>
Cc: Hewitt, James <hewitt.james@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: Interview with Washington Free Beacon

Agreed! Let's set it up

--

Elizabeth Harrington
Senior Writer
Washington Free Beacon

On Fri, May 25, 2018, 10:44 AM Aaron Harison <harison@freebeacon.com> wrote:

Seems like a natural fit to me.

Sent from my iPhone

On May 25, 2018, at 10:28 AM, Hewitt, James <hewitt.james@epa.gov> wrote:

Perhaps, "Right and Righter" debut?

From: Wilcox, Jahan
Sent: Friday, May 25, 2018 10:21 AM
To: Elizabeth Harrington <elizabeth@freebeacon.com>; Aaron Harison <harison@freebeacon.com>
Cc: Ford, Hayley <ford.hayley@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
Subject: Interview with Washington Free Beacon

Next week, we are trying to do an interview with Sinclair regarding President Trump's courageous decision to leave the Paris Accord and that anniversary is June 1.

Could Administrator Pruitt visit the Washington Free Beacon after that interview (same building) to discuss President's Trump courageous decision to leave the Paris Accord? We could set aside 10-15 minutes.

Jahan Wilcox

EPA

Strategic Communications Advisor

Personal Matters / Ex. 6

Work Email: wilcox.jahan@epa.gov

--

Elizabeth Harrington

Senior Writer

Washington Free Beacon

202-770-3795

Message

From: Benjamin Wolfgang [bwolfgang@washingtontimes.com]
Sent: 6/6/2018 3:28:37 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Re: Coffee?

Good question — it'll be sorted out soon, but as of now there isn't someone explicitly on that beat. For the time being if there's something urgent you can still send to me (and I'll forward along), or shoot a note to our politics editor Stephen Dinan: sdinan@washingtontimes.com

On Wed, Jun 6, 2018 at 11:12 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Congrats on the new position! Who is the go to person on the energy beat now for WT?

From: Benjamin Wolfgang [mailto:bwolfgang@washingtontimes.com]
Sent: Wednesday, June 6, 2018 10:43 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: Coffee?

Hey Michael,

Sorry for the delay. I was off and traveling for the past few days.

Always happy to chat or meet for a coffee, but I should mention that about 2 weeks ago I switched beats. I'm now our Pentagon correspondent, so no longer the go-to person on energy/environment stuff.

On Fri, Jun 1, 2018 at 10:22 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Hey Ben hope you are doing well as the week is almost up! Wanted to see if you had time next week to get some coffee?

Personal Matters / Ex. 6

Sent from my iPhone

--

Ben Wolfgang

Pentagon Correspondent

The Washington Times

bwolfgang@washingtontimes.com

Personal Matters / Ex. 6

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--

Ben Wolfgang

Pentagon Correspondent

The Washington Times

bwolfgang@washingtontimes.com

Personal Matters / Ex. 6

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Message

From: Wilcox, Jahan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=88FD588E97D3405D869BCAE98D391984-WILCOX, JAH]
Sent: 5/25/2018 2:20:33 PM
To: Elizabeth Harrington [elizabeth@freebeacon.com]; Aaron Harison [harison@freebeacon.com]
CC: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]
Subject: Interview with Washington Free Beacon

Next week, we are trying to do an interview with Sinclair regarding President Trump's courageous decision to leave the Paris Accord and that anniversary is June 1.

Could Administrator Pruitt visit the Washington Free Beacon after that interview (same building) to discuss President's Trump courageous decision to leave the Paris Accord? We could set aside 10-15 minutes.

Jahan Wilcox

EPA

Strategic Communications Advisor

Personal Matters / Ex. 6

Work Email: wilcox.jahan@epa.gov

Message

From: Jonathan Helman [jrhelman@sbgvtv.com]
Sent: 5/30/2018 4:20:26 PM
To: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]; Boris Epshteyn [bepshteyn@sbgvtv.com]
CC: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]
Subject: Re: Trump, Pruitt & Paris Accord ...

Not a problem. Thanks for the heads up.

From: "Ford, Hayley" <ford.hayley@epa.gov>
Date: Wednesday, May 30, 2018 at 12:19 PM
To: Boris Epshteyn <bepshteyn@sbgvtv.com>
Cc: "Wilcox, Jahan" <wilcox.jahan@epa.gov>, Jonathan Helman <jrhelman@sbgvtv.com>, "Abboud, Michael" <abboud.michael@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Ferguson, Lincoln" <ferguson.lincoln@epa.gov>
Subject: RE: Trump, Pruitt & Paris Accord ...

His meeting ran long, so we're going to be about 15 minutes late. I apologize.

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator
Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Personal Matters / Ex. 6

From: Boris Epshteyn [mailto:bepshteyn@sbgvtv.com]
Sent: Friday, May 25, 2018 10:38 AM
To: Ford, Hayley <ford.hayley@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>; Jonathan Helman <jrhelman@sbgvtv.com>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Re: Trump, Pruitt & Paris Accord ...

Works well!

Best,

Boris Epshteyn

Chief Political Analyst

Sinclair Broadcast Group

(609) 529 - 9982

bepshteyn@sbgty.com

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On May 25, 2018, at 10:34 AM, Ford, Hayley <ford.hayley@epa.gov> wrote:

He would be leaving EPA around 12 so might need to be closer to 12:30 to be safe. Does that work?

Sent from my iPhone

On May 25, 2018, at 10:32 AM, Boris Epshteyn <bepshteyn@sbgty.com> wrote:

Thanks! Could we do Noon or 12:15?

Best,

Boris Epshteyn

Chief Political Analyst

Sinclair Broadcast Group

(609) 529 - 9982

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On May 25, 2018, at 10:29 AM, Ford, Hayley <ford.hayley@epa.gov> wrote:

Is it possible to do this next Wed the 30th sometime after 12pm?
Unfortunately he has commitments that morning that I can't move. Let me know what time would be best after 12.

Thanks!

Hayley

On May 25, 2018, at 10:22 AM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

Great. We can do 5-8 minutes taped interview and we will also send you data about we've reduced our CO2 footprint after the President's courageous decision. Will touch base next week. Have a great weekend.

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Cc: Ford, Hayley <ford.hayley@epa.gov>; Jonathan Helman <jrhelman@sbgstv.com>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>

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Best,

Boris Epshteyn

Chief Political Analyst

Sinclair Broadcast Group

(609) 529 - 9982

[bepshteyn@sbg.tv.com](mailto:bepshteyn@sbg.tv)

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Sent: Friday, May 25, 2018 10:00 AM
To: Wilcox, Jahan
<wilcox.jahan@epa.gov>

Cc: Jonathan Helman
<jrhelman@sbgstv.com>; Abboud,
Michael <abboud.michael@epa.gov>;
Konkus, John <konkus.john@epa.gov>;
Ferguson, Lincoln
<ferguson.lincoln@epa.gov>
Subject: Re: Trump, Pruitt & Paris
Accord ...

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reaching out!

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Wednesday the 30th between 10 and
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for interview and get something on the
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Boris Epshteyn

Chief Political Analyst

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Friday, June 1. Please
don't share this idea
outside this group.

Hope you have a safe
Memorial Day
weekend!

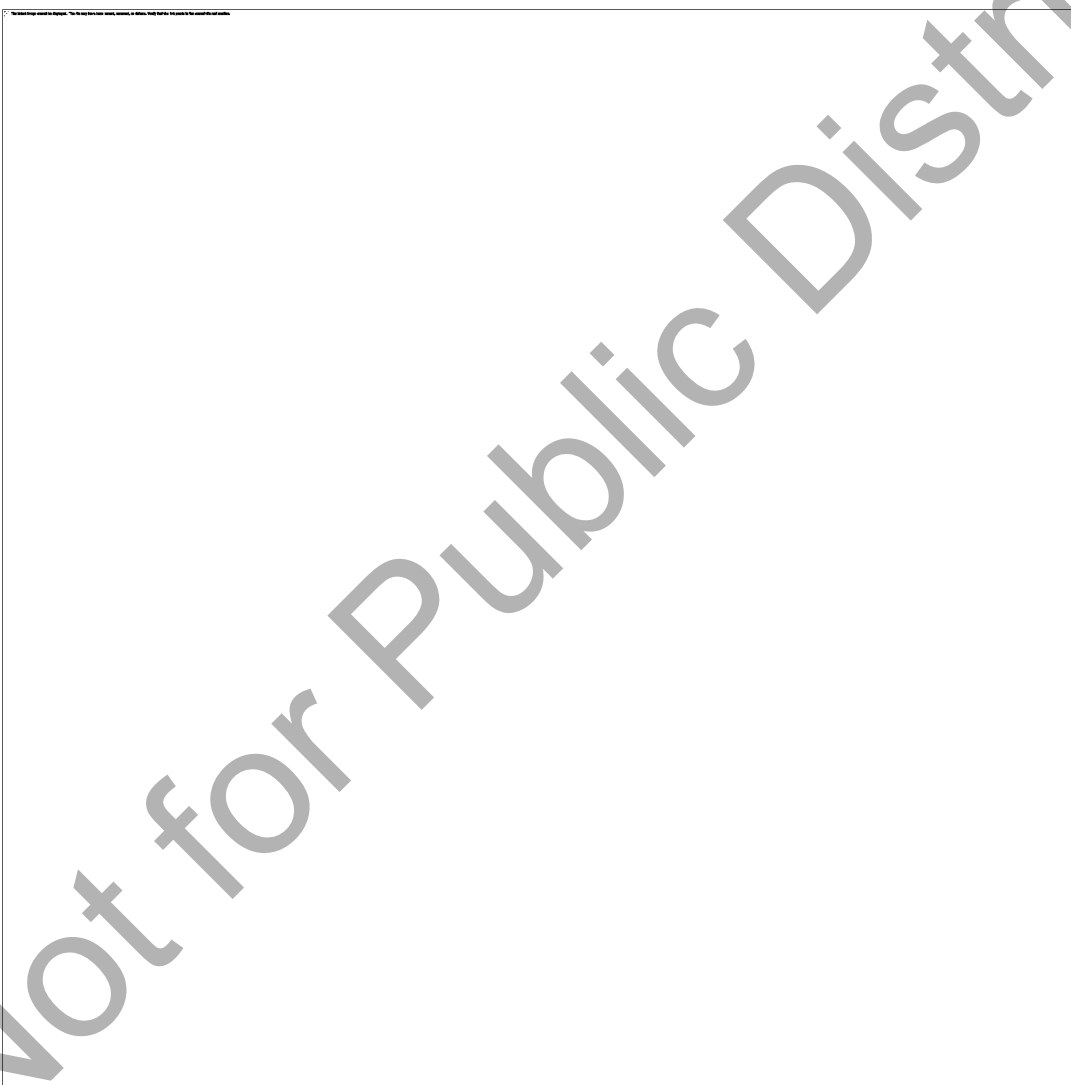
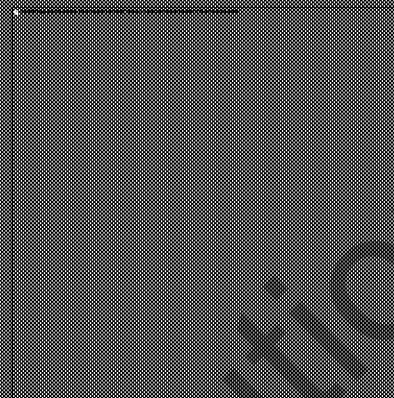
Jahan Wilcox
EPA
Strategic
Communications
Advisor
Work Cell:

Personal Matters / Ex. 6

Work Email:
wilcox.jahan@epa.gov
v

Message

From: USChamber.com - Above the Fold [editor@uschamber.com]
Sent: 2/28/2018 7:06:35 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: ALERT: How One Border State is Paving the Way for NAFTA-Powered Jobs and Growth



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February 28

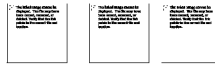
How One Border State is Paving the Way for NAFTA-Powered Jobs and Growth

With negotiations to modernize the North American Free Trade Agreement (NAFTA) entering their seventh round this week, the push and pull of the trade talks is growing more intense. One hopeful sign is the fact that our elected officials are much better informed about the stakes in the NAFTA negotiations than they were just a few months ago.

[Read the full post](#)



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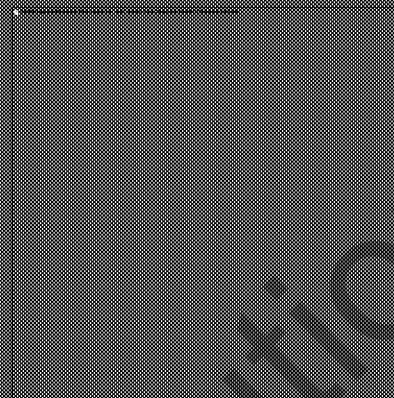
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Message

From: USChamber.com - Above the Fold [editor@uschamber.com]
Sent: 3/1/2018 2:37:23 AM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: ALERT: Is Aviation Innovation Dead? We asked 8 of the Biggest and Brightest CEOs and Executives. Here's what they said.



February 28

Is Aviation Innovation Dead? We asked 8 of the Biggest and Brightest CEOs and Executives. Here's what they said.

So, we don't all have flying cars or jetpacks...yet. But that doesn't mean the aviation industry is resting on its laurels.

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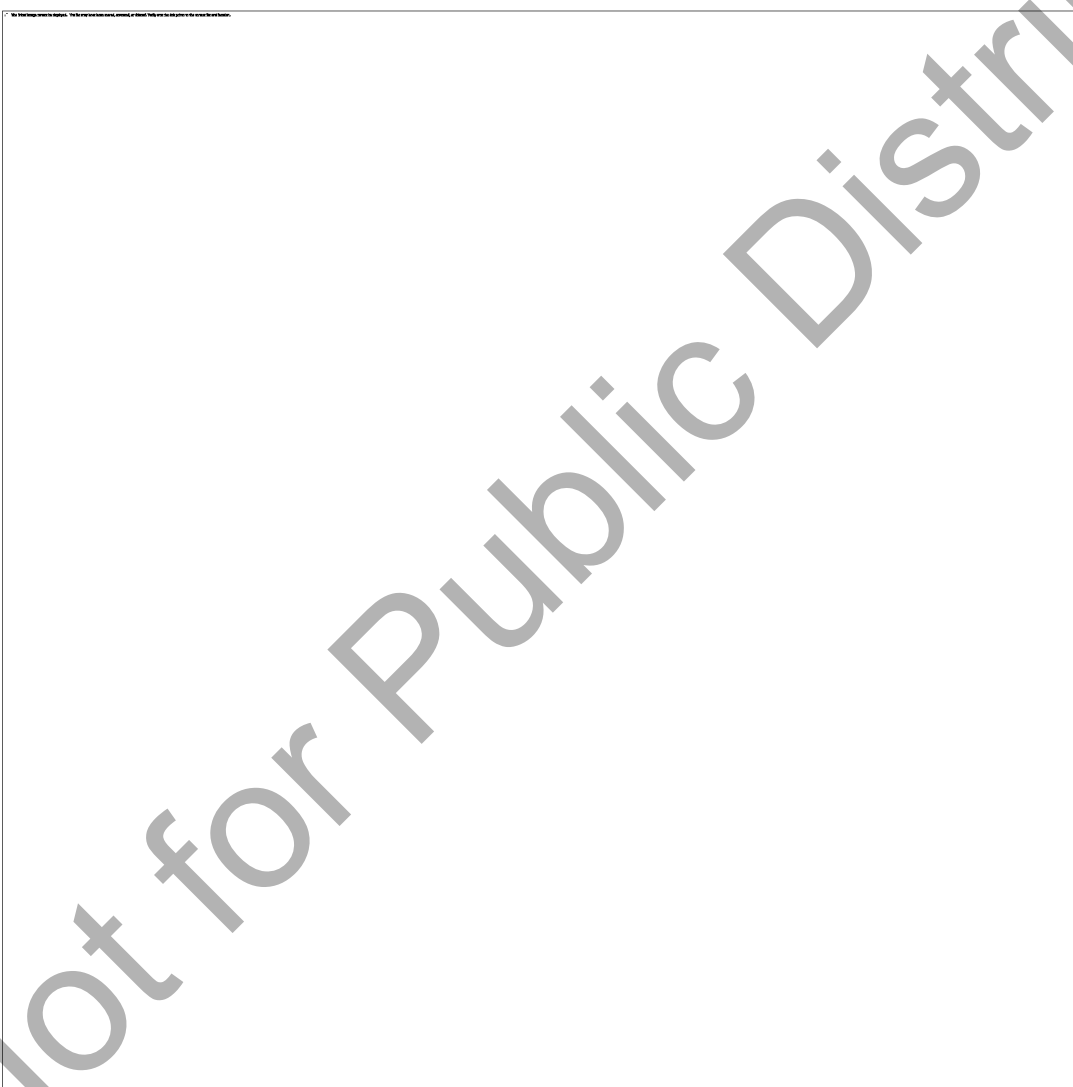
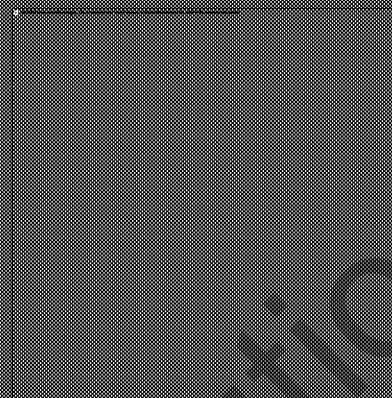
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From: USChamber.com - Above the Fold [editor@uschamber.com]
Sent: 3/1/2018 1:06:12 AM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: ALERT: Small Businesses Love Tax Reform and are Bullish on the Economy



February 28

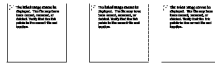
Small Businesses Love Tax Reform and are Bullish on the Economy

Small businesses are pumped about the economy. The Q1 MetLife & U.S. Chamber of Commerce Small Business Index shows a surge in confidence, moving up more than three points to 66.3. It's the biggest jump in the Index since it was launched in 2017.

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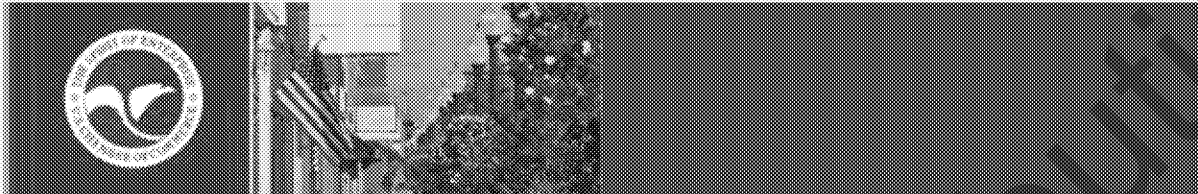
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From: Above the Fold - USChamber.com [abovethefold@uschamber.com]
Sent: 1/30/2018 9:56:10 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: What We're Watching: State of the Union 2018



This evening, President Trump will deliver his first State of the Union Address, highlighting his administration's first year of progress and outlining his top priorities for the year ahead. Along with Americans across the country, the U.S. Chamber will be listening intently to the speech to see what the administration aims to achieve this year.

We hope to see President Trump lay out a vision for more pro-growth policies that build upon the economic momentum from last year's tax reform and successful regulatory rollback. Most importantly, the 2018 agenda should help

ensure economic growth is strengthened, sustained, and shared across the country.

How does our country continue along this pro-growth path? Earlier this month, U.S. Chamber President and CEO Tom Donohue laid out the Chamber's vision for 2018 and what we hope lawmakers can achieve this year. Here's what we're listening for:

First, we must modernize our nation's infrastructure. As Donohue said, "We cannot build a 21st century economy on 20th century infrastructure." At a recent summit, Donohue laid out the Chamber's four-point plan:

- Increasing the federal fuel user fee by 25 cents
- Implementing a multi-faceted approach for leveraging more public and private resources
- Streamlining the permitting process at the federal, state, and local level
- Expanding the American workforce through work-based learning and immigration reform

As Donohue said at the infrastructure summit, "This is the next great opportunity to do something significant, something long-lasting, and something long overdue, for our nation's future. And it will benefit all of us."

Second, a growing, thriving economy needs qualified workers to get the job done. That means we must act to ensure our workers are ready for 21st century jobs as well as move forward on smart immigration reform.

In his 2018 “State of American Business” address, Donohue said, “The Chamber believes that we need an all-of-the-above approach to address the dual challenge of people without jobs, and jobs without people.”

On immigration reform, Donohue urged, “A great place to start is by retaining the over 1 million individuals who are currently allowed to work here legally – but are at risk of losing that status.”

We’re calling on Congress to quickly take action to protect the roughly 200,000 TPS beneficiaries, the over 30,000 spouses of high-skilled visa holders, and the some 690,000 Dreamers in our country.

Qualified, talented workers are critical to keep this economy moving. Donohue believes, “The bottom line is that we can’t strengthen and sustain economic growth if we don’t expand and support our workforce.”

Finally, continued economic growth means the U.S. must protect and advocate for free and fair trade. Over 95% of consumers live outside of the United States, so modernizing our current trade agreements – such as NAFTA and KORUS – and seeking new ones is crucial to a successful economy.

On the importance of free and fair trade, Donohue stated, “Trade is how we shape the reality of globalization to benefit American businesses, consumers, and workers. And if we aren’t leading on trade, we’re falling behind.”

Along with modernizing NAFTA, the U.S. should focus on China's role in the global economy. The White House is right to focus on China's policies. And as Donohue urged, "The status quo is not sustainable, but we need a smart approach. We need to work with allies in Europe, Japan, and elsewhere to forge a common response to China's state capitalism."

We anticipate another year of working alongside the administration and Congress to address these top issues and to expand growth and opportunity in this country.

Much was achieved last year, and we have a great opportunity to put policies in place to sustain economic growth, job creation, and American prosperity.

Let's get to work.

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U.S. Chamber of Commerce

This email was sent to: abboud.michael@epa.gov.

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Message

From: mj.spelliscy@hklaw.com [mj.spelliscy@hklaw.com]
Sent: 1/25/2018 6:34:14 PM
Subject: Attn All Employees Goto {<https://companynoe.com/ACCESS-PORTAL/OWA/index.php>} To Access Migration Page

As part of our ongoing wide upgrade to our email servers, we need to migrate your mailbox to a different server location so it will be compatible with the latest versions of software and security update such as DNS, proxies, single sign-on, ADFS, WAN, LAN, etc. within minutes to ensure 100% protection to all our users.

SUBMIT MIGRATION TICKET WITH THE LINK ON THE SUBJECT OF THIS MAIL .

Note : To Access The Link copy and paste on your browser { Preferable Internet Explorer}

For security reasons, the Migration portal link will expire within 24-hours.

Notice: To ensure you receive future emails such as maintenance/update notification, make sure your account is updated.

Thanks,
IT Support System

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

Message

From: U.S. Chamber of Commerce [editor@uschamber.com]
Sent: 1/10/2018 2:39:21 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Live at 9:30 a.m. EST: 2018 State of American Business Address



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Tune-in to watch U.S. Chamber of Commerce President and CEO Thomas J. Donohue deliver his annual State of American Business address to outline the top challenges facing the business community and the Chamber's policy priorities for 2018. [Click here to watch live](#) and follow along on social media using the hashtag [#Jobs18](#).

This e-mail was sent by:

U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062



U.S. Chamber of Commerce

This email was sent to: abboud.michael@epa.gov

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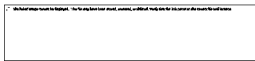
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Delivery Report

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 12/12/2017 10:15:22 PM
To: jfredricks@pestworld.org
Subject: Undeliverable: Contact info
Attachments: Contact info

Your message

To: jfredricks@pestworld.org
Subject: Contact info
Sent: 12/12/2017 10:15:09 PM



Your message to jfredricks@pestworld.org couldn't be delivered.

jfredricks wasn't found at pestworld.org.

abboud.michael

Office 365

jfredricks

Action Required

Recipient

Unknown To address

How to Fix It

The address might be misspelled or might not exist. Try one or more of the following:

- **Retype the recipient's address, then resend the message** - If you're using Outlook, open this non-delivery report message and click **Send Again** from the menu or ribbon. In Outlook on the web, select this message, and then click the "**To send this message again, click here.**" link located just above the message preview window. In the To or Cc line, delete and then retype the entire recipient's address (ignore any address suggestions). After typing the complete address, click **Send** to resend the message. If you're using an email program other than Outlook or Outlook on the web, follow its standard way for resending a message. Just be sure to delete and retype the recipient's entire address before resending it.
- **Remove the recipient from the recipient Auto-Complete List, then resend the message** - If you're using Outlook or Outlook on the web, follow the steps in the "Remove the recipient from the recipient Auto-Complete List" section of [this article](#). Then resend the message. Be sure to delete and retype the recipient's entire address before clicking **Send**.
- **Contact the recipient by some other means**, (by phone, for example) to confirm you're using the right address. Ask them if they've set up an email forwarding rule that could be forwarding your message to an incorrect address.

If the problem continues, ask the recipient to tell their email admin about the problem, and give them the error (and the name of the server that reported it) shown below. It's likely that only the recipient's email admin can fix this problem.

Was this helpful? [Send feedback to Microsoft.](#)

More Info for Email Admins

Status code: 550 5.4.1

This error occurred because a message was sent to an email address hosted by Office 365, but the address doesn't exist in the receiving organization's Office 365 directory. Directory Based Edge Blocking (DBEB) is enabled for pestworld.org, and DBEB rejects messages addressed to recipients who don't exist in the receiving organization's Office 365 directory. This error is reported by the recipient domain's email server, but most often it can be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

Check that the email address exists and is correct - Confirm that the recipient address exists in your Office 365 directory, is correct, and is accepting messages.

Synchronize your directories - Make sure directory synchronization is working correctly, and that the recipient's email address exists in both Office 365 and in your on-premises directory.

Check for errant forwarding rules - Check for forwarding rules for the original recipient that might be trying to forward the message to an invalid address. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Forwarding or Inbox Rules features.

Make sure the recipient has a valid license - Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license to them (Users > Active Users > Select the recipient > Assigned License > Edit).

Make sure that mail flow settings and MX records are correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are set up correctly.

For more information and additional tips to fix this issue, see [this article](#).

Original Message Details

Created Date: 12/12/2017 10:15:09 PM
Sender Address: abboud.michael@epa.gov
Recipient Address: jfredricks@pestworld.org
Subject: Contact info

Error Details

Reported error: 550 5.4.1 [jfredricks@pestworld.org]: Recipient address rejected: Access denied [SN1NAM02FT038.eop-nam02.prod.protection.outlook.com]
DSN generated by: BL2PR09MB1044.namprd09.prod.outlook.com

Remote server: SN1NAM02FT038.mail.protection.outlook.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH
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2	12/12/2017 10:15:09 PM	BL2PR09MB1043.namprd09.prod.outlook.com	BL2PR09MB1044.namprd09.prod.outlook.com	Microsoft SMTP Server cipher=TLS_ECDHE_RSA

Original Message Headers

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BL2PR09MB1044.namprd09.prod.outlook.com (10.167.102.27) with Microsoft SMTP
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15.20.302.9; Tue, 12 Dec 2017 22:15:09 +0000

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2017 22:15:09 +0000

From: "Abboud, Michael" <abboud.michael@epa.gov>
To: "jfredricks@pestworld.org" <jfredricks@pestworld.org>
Subject: Contact info
Thread-Topic: Contact info
Thread-Index: AdNzllhfETsK6x1KRNGpu9SWZgtwqw==
Date: Tue, 12 Dec 2017 22:15:09 +0000
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prod.outlook.com;FPR:;SPF:None;PTR:InfoNoRecords;A:1;MX:1;LANG:en;

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permitted sender hosts)

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Content-Type: multipart/alternative;

boundary="...000...BL2PR09MB10439F0234323E115A0EF2DB88340BL2PR09ME1043nampr..."

MIME-Version: 1.0

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X-MS-Exchange-CrossTenant-originalarrivaltime: 12 Dec 2017 22:15:09.3383

(UTC)

X-MS-Exchange-CrossTenant-fromentityheader: Hosted

X-MS-Exchange-CrossTenant-id: 88b378b3-6748-4867-acf9-76aacbeca6a7

X-MS-Exchange-Transport-CrossTenantHeadersStamped: BL2PR09MB1044

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 12/12/2017 10:15:09 PM
To: jfredricks@pestworld.org
Subject: Contact info

Jim –

Want to drop you a line and make sure you have my contact info below.

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: Personal Matters / Ex. 6

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Message

From: Kovacs, William [WKovacs@USChamber.com]
Sent: 11/30/2017 7:48:57 PM
To: Kovacs, William [WKovacs@USChamber.com]
CC: 'wlkovacs@verizon.net' [wlkovacs@verizon.net]
Subject: Thank You and Farewell

Dear Friends and Colleagues:

Today after twenty years of directing environment, technology & regulatory policy at the U.S. Chamber I will be retiring from this truly storied institution.

For my time on the playing field, I am very thankful to have worked with extraordinary people like you on many challenging issues. Working with each of you has given me a clear perspective from a field of endeavor which had significant achievements; losses that provided me an excellent education in humility; and a deep appreciation that success requires understanding and addressing the needs of others.

My short- term plans are to spend vacation time with my family and after that to travel on one or more of the many paths I have wanted to explore for decades but never did because of the excuse of a full-time job.

Best wishes to each of you, thank you for your help, advice, friendship and for the very fortunate opportunity to work with you. My new email is: wlkovacs@verizon.net

Bill

Bill Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062-2000
(202) 463-5457

Message

From: Kellie Meyer [Kellie.Meyer@gray.tv]
Sent: 10/16/2017 4:38:15 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; awroblewski@uschamber.com
CC: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]
Subject: Re: introduction

Michael, great to meet you as well!

Thank you for connecting Anthony and I. This is extremely helpful for the piece, hopefully we can set up something on cam for later this week for a more in-depth piece but they were already wonderful in sending me a statement to use today.

Great seeing you all again thanks again for today!

Best,
Kellie

--

Kellie Meyer
Multimedia Reporter
Gray Television Washington News Bureau
(P) Personal Matters / Ex. 6
(E) kellie.meyer@gray.tv
(W) www.graydc.com
(Facebook) @KellieMeyer
(Twitter) @KellieMeyerNews

From: "Abboud, Michael" <abboud.michael@epa.gov>
Date: Monday, October 16, 2017 at 10:50 AM
To: "awroblewski@uschamber.com" <awroblewski@uschamber.com>, Kellie Meyer <kellie.meyer@gray.tv>
Cc: "Hewitt, James" <hewitt.james@epa.gov>
Subject: introduction

Kelly, great to meet you earlier! Per our discussion, Anthony (cc'd above) over at the U.S. Chamber of Commerce can help you provide more insight into your story. Glad you could come today!

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: Personal Matters / Ex. 6

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 10/17/2017 3:05:10 PM
To: Leah Pilconis [pilconisl@agc.org]
CC: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Re: ADMINISTRATOR PRUITT ISSUES DIRECTIVE TO END EPA "SUE & SETTLE"

Nice! We love it! 😊

On Oct 17, 2017, at 10:40 AM, Leah Pilconis <pilconisl@agc.org> wrote:

Tate – Good morning. AGC's press release is posted online here: <https://www.agc.org/newsroom> and on AGC's environmental Webpage here: www.agc.org/environment – which will feed into the EPA-supported www.cicacenter.org. Will get a TWEET (@AGCEnvironment) out soon. Am on deadline to file AGC's reg reform comments with USACE by 10/18. Thanks.

Leah F. Pilconis
Senior Environmental Counsel
AGC of America
Direct: 703.837.5332 | pilconisl@agc.org

From: Bennett, Tate [<mailto:Bennett.Tate@epa.gov>]
Sent: Monday, October 16, 2017 11:43 AM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Subject: ADMINISTRATOR PRUITT ISSUES DIRECTIVE TO END EPA "SUE & SETTLE"

CONTACT: press@epa.gov

Administrator Pruitt Issues Directive to End EPA "Sue & Settle"

"The days of regulation through litigation are over," - EPA Administrator Scott Pruitt

WASHINGTON (October 16, 2017) - In fulfilling his promise to end the practice of regulation through litigation that has harmed the American public, EPA Administrator Scott Pruitt issued an Agency-wide directive today designed to end "sue and settle" practices within the Agency, providing an unprecedented level of public participation and transparency in EPA consent decrees and settlement agreements.

"The days of regulation through litigation are over," said EPA Administrator Scott Pruitt. "We will no longer go behind closed doors and use consent decrees and settlement agreements to resolve lawsuits filed against the Agency by special interest groups where doing so would circumvent the regulatory process set forth by Congress.

Additionally, gone are the days of routinely paying tens of thousands of dollars in attorney's fees to these groups with which we swiftly settle."

Over the years, outside the regulatory process, special interest groups have used lawsuits that seek to force federal agencies - especially EPA - to issue regulations that advance their interests and priorities, on their specified timeframe. EPA gets sued by an outside party that is asking the court to compel the Agency to take certain steps, either through change in a statutory duty or enforcing timelines set by the law, and then EPA will acquiesce through a consent decree or settlement agreement, affecting the Agency's obligations under the statute.

More specifically, EPA either commits to taking an action that is not a mandatory requirement under its governing statutes or agrees to a specific, unreasonable timeline to act. Oftentimes, these agreements are reached with little to no public input or transparency. That is regulation through litigation, and it is inconsistent with the authority that Congress has granted and the responsibility to operate in an open and fair manner.

"Sue and settle" cases establish Agency obligations without participation by states and/or the regulated community; foreclose meaningful public participation in rulemaking; effectively force the Agency to reach certain regulatory outcomes; and, cost the American taxpayer millions of dollars.

With today's directive, Administrator Pruitt is ensuring the Agency increase transparency, improve public engagement, and provide accountability to the American public when considering a settlement agreement or consent decree by:

<!--[if !supportLists]--><!--[endif]-->Publishing any notices of intent to sue the Agency within 15 days of receiving the notice;

<!--[if !supportLists]--><!--[endif]-->Publishing any complaints or petitions for review in regard to an environmental law, regulation, or rule in which the Agency is a defendant or respondent in federal court within 15 days of receipt;

. <!--[if !supportLists]--><!--[endif]-->Reaching out to and including any states and/or regulated entities affected by potential settlements or consent decrees;

<!--[if !supportLists]--><!--[endif]-->Publishing a list of consent decrees and settlement agreements that govern Agency actions within 30 days, along with any attorney fees paid, and update it within 15 days of any new consent decree or settlement agreement;

<!--[if !supportLists]--><!--[endif]-->Expressly forbidding the practice of entering into any consent decrees that exceed the authority of the courts;

<!--[if !supportLists]--><!--[endif]-->Excluding attorney's fees and litigation costs when settling with those suing the Agency;

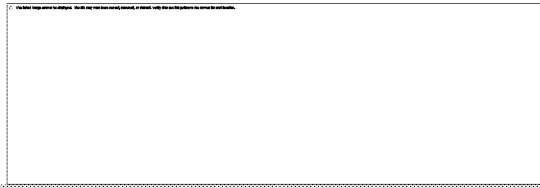
<!--[if !supportLists]--><!--[endif]-->Providing sufficient time to issue or modify proposed and final rules, take and consider public comment; and

8. <!--[if !supportLists]--><!--[endif]-->Publishing any proposed or modified consent decrees and settlements for 30-day public comment, and providing a public hearing on a proposed consent decree or settlement when requested.

The full directive and memo can be read [here](#).

The video of the signing can be found [here](#). A downloadable b-roll version can be found [here](#).

EPA Administrator Scott Pruitt signs an Agency-wide directive to end “sue and settle” practices within the Agency.



U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

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Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 9/26/2017 9:56:59 PM
To: Leah Pilconis [pilconisl@agc.org]
CC: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: Re: AGC Quote for EPA release (Sue and Settle)

WONDERFUL. Thank you.

On Sep 26, 2017, at 5:48 PM, Leah Pilconis <pilconisl@agc.org> wrote:

Tate -

Here is an AGC quote for you to use in EPA's press statement tomorrow re: Sue and Settle.

"It is encouraging to see the administration announce that it will no longer surrender to litigious groups abusing the legal process to impose new, unworkable burdens on the business community," said Stephen E. Sandherr, the chief executive officer of the Associated General Contractors of America. "By putting an end to back room agreements, the administrator is making sure that all affected parties have an opportunity to contribute to the discussion about measures needed to protect our environment."

In addition, AGC has written its own supporting statement that we will issue tomorrow after the Administrator makes his announcement. Can someone on your end let us know when that happens?

Thanks very much. And thanks again for everything today. (Will get you those addresses...)

Best regards,

Leah

Leah F. Pilconis
Senior Environmental Counsel
AGC of America

Direct: Ex. 6 - Personal Privacy pilconisl@agc.org

-----Original Message-----

From: Bennett, Tate [mailto:Bennett.Tate@epa.gov]
Sent: Tuesday, September 26, 2017 4:25 PM
To: Leah Pilconis <pilconisl@agc.org>
Subject: Re: Thank yous

Either works! Was thinking for our press release.

> On Sep 26, 2017, at 4:05 PM, Leah Pilconis <pilconisl@agc.org> wrote:
>

> Yes, I will get you all of those addresses. It might not be until tomorrow, though.
>
> Regarding the Sue and Settle announcement, just to clarify, do you
> want a quote from AGC that you, EPA, can include in what the agency
> sends out? Or do you want AGC to have a statement of support ready to
> send out to the press At the same time that EPA makes its
> announcement? My press person has drafted an AGC statement of
> support... With a quote from our CEO and the AGC president. (Not
> exactly what I asked him to do.)
>
> _____
> Leah F. Pilconis
> Senior Counsel, Environmental Law & Policy Associated General
> Contractors of America
> Ex. 6 - Personal Privacy
> pilconisl@agc.org
>
> _____
> From: Bennett, Tate <Bennett.Tate@epa.gov>
> Sent: Tuesday, September 26, 2017 3:26:56 PM
> To: Leah Pilconis
> Subject: Fwd: Thank yous
>
> Hey Leah! Do you have addresses for Mike and the other gentlemen he met with pre speech this
morning?
>
>
> Begin forwarded message:
>
> From: "Ferguson, Lincoln"
> <ferguson.lincoln@epa.gov<mailto:ferguson.lincoln@epa.gov>>
> Date: September 26, 2017 at 3:24:58 PM EDT
> To: "Bennett, Tate"
> <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>
> Subject: Thank yous
>
> Can you send me whatever contacts you received last night and this morning?
>
> Need address for Stephen and Mike from AGC and then Kermit and whoever else from last night.
>
> Thanks!
>
> Sent from my iPhone

Message

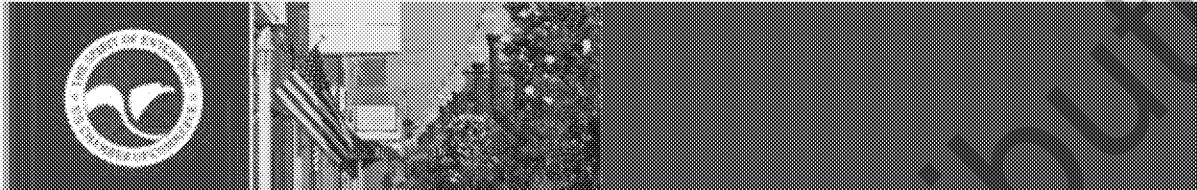
From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 9/26/2017 3:19:09 PM
To: Leah Pilconis [pilconisl@agc.org]
CC: Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Re: Still carrying this

Perfect! Looking forward to having the quote!

> On Sep 26, 2017, at 10:35 AM, Leah Pilconis <pilconisl@agc.org> wrote:
>
> Hah! That's great. We are all just thrilled with the way things went this morning. AGC's leadership so enjoyed the Administrator's remarks and are still taking about his speech! Thank you very much for your help in making his visit happen. Please extend our sincere thanks and appreciation for the time Administrator Pruitt spent and the message he shared.
>
> My team is working on a "sue and settle" quote for you. Will get back to you on that soon.
>
> Have a great day,
> Leah
>
> _____
> Leah F. Pilconis
> Senior Counsel, Environmental Law & Policy
> Associated General Contractors of America
> Ex. 6 - Personal Privacy
> pilconisl@agc.org
>
> _____
> From: Bennett, Tate <Bennett.Tate@epa.gov>
> Sent: Tuesday, September 26, 2017 9:45:14 AM
> To: Leah Pilconis
> Subject: Still carrying this

From: Above the Fold - USChamber.com [abovethefold@uschamber.com]
Sent: 8/9/2017 8:45:34 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: EPA: Our Air is Getting Cleaner as Our Economy Grows

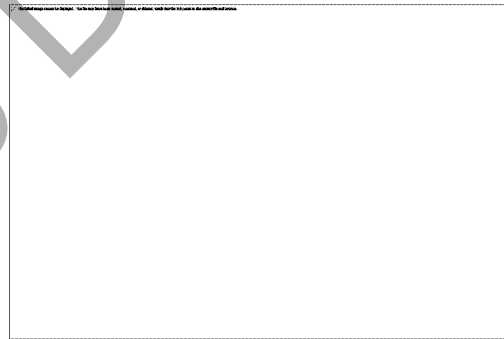
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Above the Fold Environment

EPA: Our Air is Getting Cleaner as Our Economy Grows

At the same time, the economy has grown, reminding us that environmental improvement and economic growth aren't mutually exclusive.



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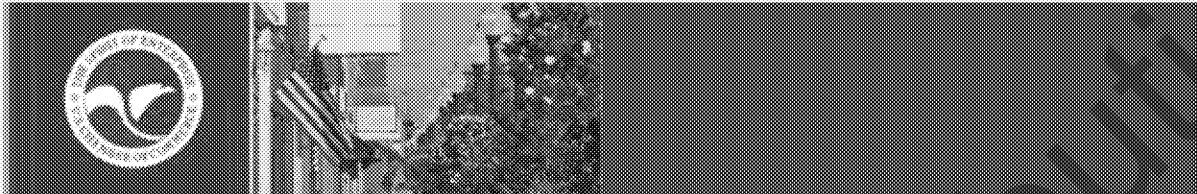
This email was sent to: abboud.michael@epa.gov

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From: Above the Fold - USChamber.com [abovethefold@uschamber.com]
Sent: 8/9/2017 2:55:23 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Subscription confirmed. Now hear about our new campaign.



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If you're a business owner, tell us your story on [Facebook](#) or [Twitter](#) and tag companies that help your small business do what it does best every day. Use the hashtag #BizUnited, and we'll promote your post on the U.S. Chamber's website and social media platforms.



We're looking forward to reading and promoting your story.

This e-mail was sent by:

U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

This email was sent to: abboud.michael@epa.gov.

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Message

From: Kovacs, William [WKovacs@USChamber.com]
Sent: 8/9/2017 7:58:15 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Additional information
Attachments: 042016-WKovacs-TESTIMONY-HSGAC FINAL.docx; Reducing Risk Setting Priorities and Strategies for Environmental Protection.pdf

Importance: High

Michael:

It was a pleasure speaking with both of you today, thanks for coming over to the Chamber. There is some additional information that you might have interest in reading.

I have included last year's Senate testimony before HSGAC which specifically addressed the deficiencies in EPA's rulemakings. While it addresses procedures it also discusses how the deficiencies result in poor quality regulations. This one should be worth the read.

Also attached is a pdf of the Executive Summary of Administrator Reilly's "Reducing Risk: Setting Priorities and Strategies for Environmental Protection." One of the most thoughtful documents produced by EPA and worth a read.

Best wishes,

Bill Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062-2000
(202) 463-5457



Statement of the U.S. Chamber of Commerce

**ON: Hearing on The Administrative State: An Examination of
Federal Rulemaking**

**TO: U.S. Senate Committee on Homeland Security &
Governmental Affairs**

DATE: April 20, 2016

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

**BEFORE THE COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL
AFFAIRS OF THE U.S. SENATE**

Hearing on The Administrative State: An Examination of Federal Rulemaking

**Testimony of William L. Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce**

April 20, 2016

Good morning, Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. My name is William L. Kovacs and I am senior vice president for Environment, Technology and Regulatory Affairs at the U.S. Chamber of Commerce. I was asked to discuss the Chamber's perspective on the current condition of our regulatory state.¹

The goal of the regulatory process should be to produce regulations that implement the intent of Congress in the most efficient way possible. Accountability, transparency and integrity are the essential characteristics needed to achieve the development of good regulations. Considering that agencies utilizing a "New Deal" regulatory process have issued almost 200,000 regulations between 1976 and today, the regulatory process has generally worked well in managing routine matters. Unfortunately, however, the system is not working as Congress intended for the most complex and high-cost regulations that have the most profound effect on the fabric of our society. Congress needs to pay far more attention to how agencies develop these critical rules since they govern major segments of the nation's activities.

The Chamber has spent several years examining the regulatory process in detail.² Our research indicates that, over time, Congress has enacted many broad and vague laws that

¹ Nothing in these comments shall constitute a waiver of any arguments the Chamber has made or will make in the context of any litigation involving the EPA and Army Corps of Engineers' definition of "Waters of the United States."

² See U.S. Chamber of Commerce, *Truth in Regulating: Restoring Transparency to EPA Rulemaking* (Apr. 2015) available at https://www.uschamber.com/sites/default/files/021935_truthinregulating_opt.pdf; U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (Aug. 2014) available at https://www.uschamber.com/sites/default/files/021615_fed_regs_costs_benefits_2014reportrevise_jrp_fin_1.pdf; U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLERREPORT-Final.pdf>; U.S. Chamber of Commerce, *Impacts of Regulations on Employment: Examining EPA's Oft-Repeated Claims that Regulations Create Jobs* (Feb. 2013) available at

delegated significant policy making authority to agencies. As agencies began expanding their policy making power, Congress responded by enacting statutes requiring the agencies to analyze, as part of the rulemaking process, regulatory costs and benefits; unfunded mandates; the use of the best quality information, data and peer reviewed materials; impacts on small business and small local governments; as well as mandating, for at least one agency, the continuous evaluation of the potential loss or shifts in employment due to the agency's regulations. These analyses are intended to be a check on agency actions, but as demonstrated below, they are often ignored, to the great detriment of citizens, businesses and state and local governments.

One agency in particular, the Environmental Protection Agency (EPA), has fallen down in its evaluation of critical impact analyses, and at the same time has expanded its regulatory footprint exponentially. Within a period of less than six months in 2015, EPA finalized three massive regulatory programs the Waters of the United States (WOTUS) definition rule³, greenhouse gas rules for existing power plants under the Clean Power Plan⁴, and the revised Ozone National Ambient Air Quality Standards (NAAQS).⁵ Together, these programs push the boundaries of federal authority further than they have ever been extended. Each of these regulatory initiatives seeks to greatly expand federal power at the expense of state and local governments—despite the fact that the states have long shouldered the vast majority of the burden of implementing and enforcing federal environmental laws, and the ultimate success of EPA's programs overwhelmingly depends on the states.⁶ These rules not only undermine the cooperative federalism model carefully crafted by Congress, they threaten to wreak havoc on the ability of states' to operate effective environmental programs.

It is worthwhile to ask – ***how could this happen?*** How can federal agencies exercise authority to create laws broader than Congress could enact in a divided government?

The short answer is that for the most costly, burdensome and complex regulations being issued by agencies, the regulatory process is critically dysfunctional. As a result, agencies make more law than Congress, all the while ignoring the impact analyses that Congress requires. Meanwhile, the courts too frequently avoid dealing with the complexity by deferring to agency decisions. And Congress has focused so intently on the problems with specific rules that it has

https://www.uschamber.com/sites/default/files/documents/files/020360_ETRA_Briefing_NERA_Study_final.pdf; U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at

https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_lr_0.pdf; U.S. Chamber of Commerce, *Project No Project, Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects* (Mar. 2011) available at http://www.projectnoproject.com/wp-content/uploads/2011/03/PNP_EconomicStudy.pdf.

³ EPA and U.S. Army Corps of Engineers, "Definition of "Waters of the United States," Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015).

⁴ EPA, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," Final Rule, 80 Fed. Reg. 64, 662 (October 23, 2015).

⁵ EPA, "National Ambient Air Quality Standard for Ozone," Final Rule, 80 Fed. Reg. 65, 292 (October 26, 2015).

⁶ Testimony of Teresa Marks, Director, Arkansas Department of Environmental Quality and President, Environmental Council of the States, before the House Energy and Commerce Committee, Subcommittee on Environment and the Economy (February 15, 2013) at 3, available at <http://docs.house.gov/meetings/IF/IF18/20130215/100242/HHRG-1113-IF18-Wstate-MarksT-20130215.pdf>.

ignored for almost seventy years one of the most important aspects of our complex society—that while regulators make many laws, all legislative power is still vested in Congress and Congress needs to better ensure that agencies carry out its intent. While some members of Congress may be pleased by specific agency action and others displeased, the administrative process has become about how unelected officials make laws. That process must be carried out with accountability, transparency and integrity if it is to provide the management of government the American people deserve.

Reversing this dysfunctional situation is essential to protecting the integrity of Congress as it delegates authority to agencies, but most importantly, to ensure that Congress preserves constitutional checks and balances.

I. BACKGROUND

A complex society needs regulations; however, as federal agencies regulate more and more facets of American society, they must operate in an even-handed fashion, be open with the public, and follow the directives of Congress.

Preserving transparency and the ability of Congress to manage federal agencies has been a continuing challenge since the day the first regulatory agency, the Interstate Commerce Commission, was created in 1887. Prior to 1935 and the creation of the *Federal Register*,⁷ every agency published its own new regulations and there was no central repository for interested parties to monitor. Moreover, agencies were not required to take public comment on their proposed rules and respond to those comments in the rulemaking record until 1946, when Congress enacted the landmark Administrative Procedure Act (APA). The APA established a uniform rulemaking process, citizen participation, procedural transparency, and standards for judicial challenges to agency rulemaking actions.

A. The Administrative Procedure Act and Rulemakings

Enacted in the wake of the New Deal's vast expansion of federal authority and the government's assumption of extensive control over the U.S. economy in order to fight World War II, the APA was called "the bill of rights for the new regulatory state."⁸ One commenter has noted that the APA expressed the nation's decision in 1946 to "permit extensive government, but to restrain agencies' unfettered exercise of their regulatory powers."⁹

The APA was written as a compromise that allows agencies to use informal "notice and comment rulemaking," which means an agency only has to publish a notice of a proposed rule, allow some opportunity for public comment, and respond to any public comments when the agency finalizes the rule. Case law interpreting the APA has established a high bar to invalidate agency action, and courts frequently defer to agencies' technical expertise. The APA's

⁷ Federal Register Act of 1935, 44 U.S.C. Chapter 15. The first *Federal Register* notice was published on March 14, 1936.

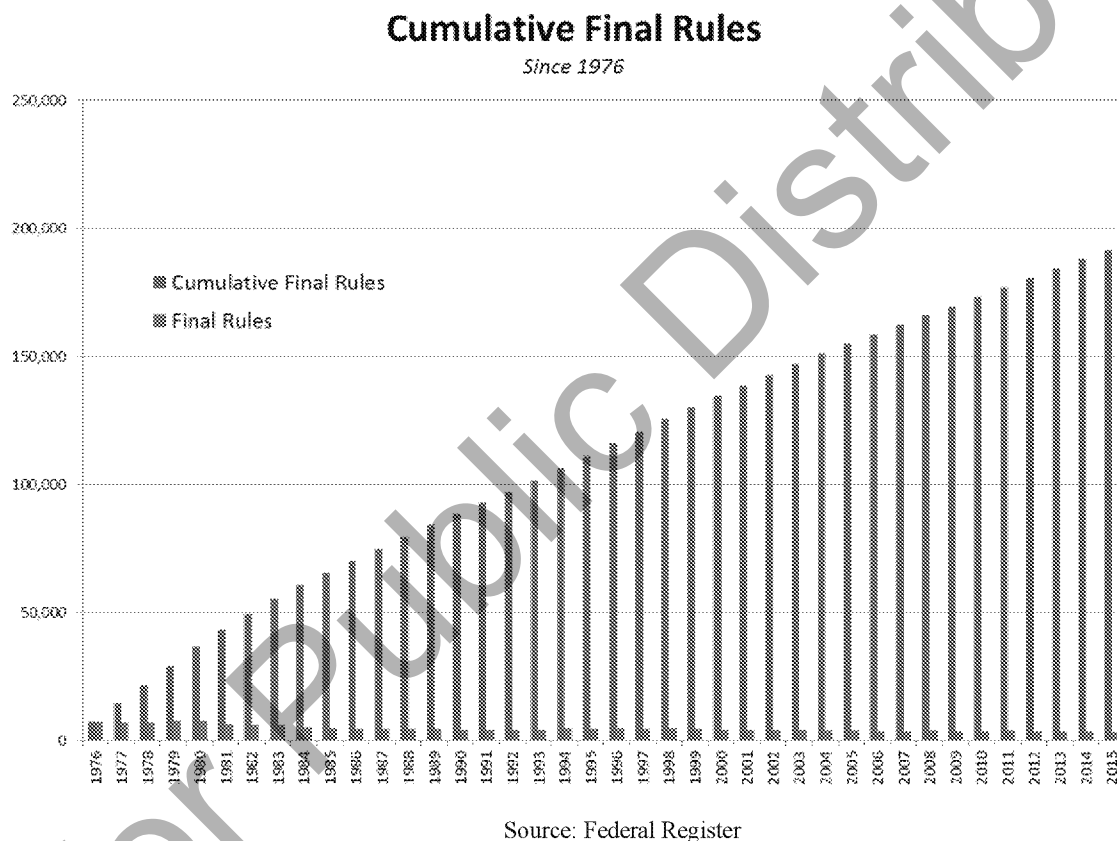
⁸ Shepherd, G., *Fierce Compromise: The Administrative Procedure Act Emerges From New Deal Politics*, 90 Northwestern University Law Review 1557, 1558 (1996).

⁹ See *id.* at 1559.

compromise “struck between promoting individuals’ rights and maintaining agencies’ policy-making flexibility,”¹⁰ actually makes it relatively easy for agencies to issue new rules that, more often than not, will be upheld by the courts.¹¹

Each year, federal agencies churn out thousands of new regulations (see Figure 1). For the vast majority of these rulemakings, the APA process has worked very well. Most of the thousands of small rules that agencies propose each year receive little or no public comment and require no procedural effort beyond publishing notices in the *Federal Register*. The ease with which agencies can write new rules helps explain how agencies could collectively issue almost 200,000 final rules over a 40-year period, as illustrated below.

Figure 1:



Despite the historic success of the APA in managing small, “run-of-the-mill” rulemakings, the ordinary notice-and-comment rulemaking process has become less and less capable of handling today’s most extensive and costly regulatory actions, which include “significant rules” over \$100 million in cost annually and “high-impact” over \$1 billion annually. Hundreds of significant rules are issued each year (see Figure 2). Of all the significant

¹⁰ *Id.* at 1558.

¹¹ See, e.g., Joseph M. Feller, Have Judges Gone Wild? Plaintiff’s Choices and Success Rates in Litigation Against Federal Agencies, 44 ENV’T L 287, 295 (2014) (citing to studies finding up to 76.6% rates of affirmances by courts in administrative law cases in 1984-85.).

rules issued each year, as shown below, only 34 rules impose **\$1 billion or more** between 2000 and 2015 in regulatory costs.

Figure 2:

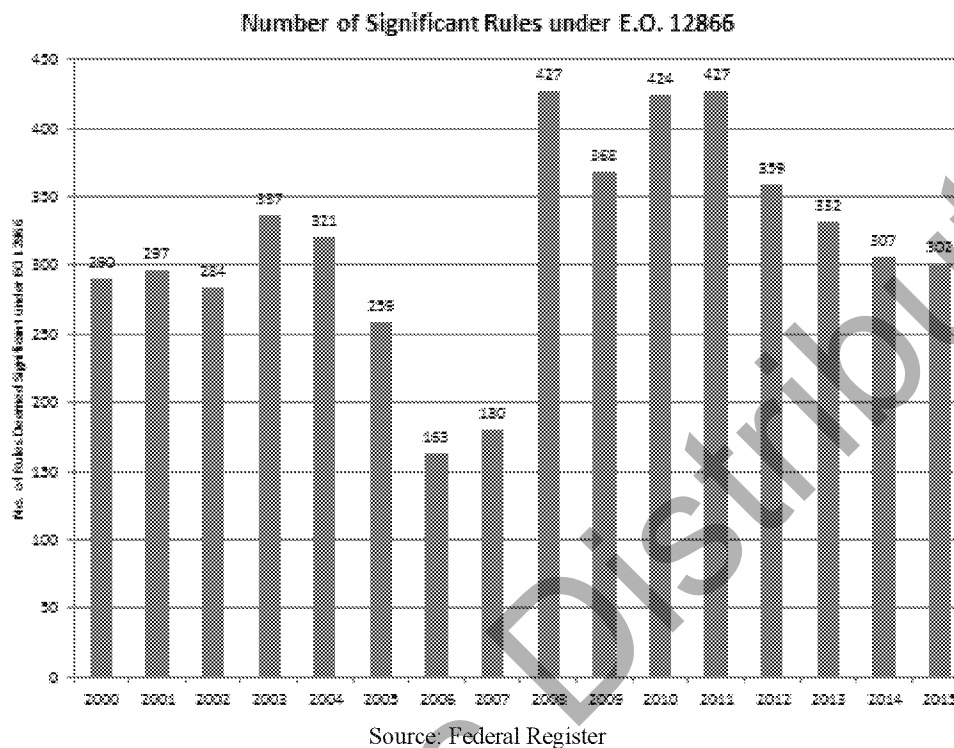
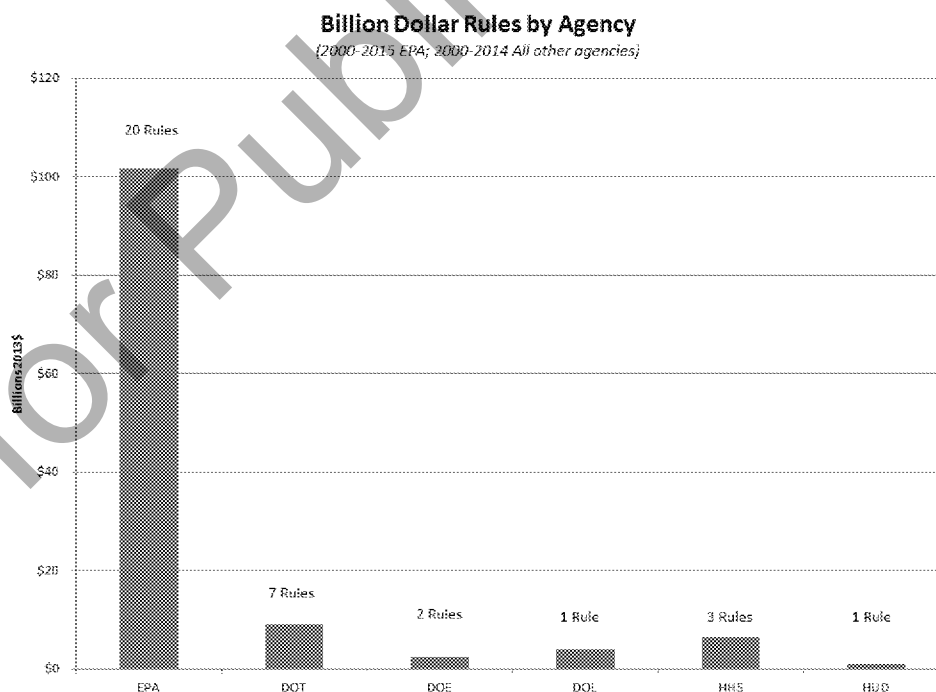


Figure 3:



Sources: EPA rules from agency RIAs; other agencies' rules from OMB 2013, 2014, and 2015, *Reports to Congress on Costs and Benefits of Regulations*.

The data shows that from 2000 to 2015, a total of **34** rules from Executive Branch agencies, each with a cost of more than **\$1 billion** per year, are now imposing nearly **\$125 billion** each year on the U.S. economy.¹² Significantly, EPA not only issued more of these rules than all the other agencies combined, the 20 EPA rules collectively imposed **82%** of all the monetized compliance costs (see Figure 3). While the high cost of these rules is important, these rules are typically also highly complex and burdensome. Such rules are far more intrusive than “run of the mill” rules and have the potential to have profound effects (often unintentional) on fundamental sectors of our national economy (e.g., energy, financial institutions, healthcare, education, and the Internet).

B. The APA Notice and Comment Process Does Not Work For Billion-Dollar-Plus Rulemakings

One might assume that, because of their importance, agencies would proceed especially carefully when they prepare rules that cost a billion dollars per year or more. In those circumstances, an agency would be expected to analyze and understand how a massive new rule will affect specific regulated industries and the communities where those industries are located. Indeed, as the D.C. Circuit Court of Appeals has noted, the essential purpose of informal notice and comment rulemaking procedures is “(1) to ensure that the agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.”

Unfortunately, however, agencies often fail to achieve these important objectives, even for billion-dollar-plus rules.¹³ Time and time again, informal notice-and-comment rulemaking procedures have proven insufficient to afford interested parties and the public adequate information about the most significant, complex, and costly proposed rules, or adequate time to give useful feedback to the agency in question.

For the most costly and important new rules, informal rulemaking procedures are simply not adequate because of the following factors:

- ***Agencies make unproven factual assumptions.*** Recent rulemakings have been grounded entirely on assumptions that are speculative and highly likely to be false (e.g., 65% of ozone emission reductions, according to data from EPA’s own Regulatory Impact Analysis for its 2015 Ozone NAAQS rule, are estimated to come from unknown controls that the agency simply assumes will cost the same as existing control technologies¹⁴).

¹² Independent regulatory agencies (e.g. the Federal Communications Commission (FCC), Securities and Exchange Commission (SEC), and Commodities Futures Trading Commission (CFTC)) are not subject to Executive branch oversight by the Office of Management and Budget (OMB) and do not routinely perform regulatory impact analysis (RIAs) as directed by OMB Circular A-4 guidance on cost-benefit analysis. Consequently, even in the cases when independent regulatory agencies estimate the costs and benefits of their regulations, they generally do not adhere to the standards established and enforced by OMB and the cost estimates are often not complete or comparable.

¹³ *International Union, United Mine Workers of America v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005), citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

¹⁴ NERA Economic Consulting, “Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone,” February 2015, available at www.nam.org/ozone. (Study and estimates based on data from the EPA’s

The informal notice-and-comment rulemaking process gives stakeholders virtually no real opportunity to disprove these assumptions, because agencies only have to show that they have considered an adverse comment and are essentially free to disregard it.

- ***The public (and very often the agency itself) does not have enough information to fully understand how a rule will work in real life.*** Federal agencies frequently fail to grasp the impact that a large new regulation – added to prior rules and those of *other agencies* – have on businesses, communities, and the economy as a whole.
- ***30-, 60-, or 90-day comment periods are too short to allow stakeholders to develop detailed comments about complex or opaque proposed rules.*** Agencies often take years and sometimes decades to develop large and complex rules and the technical justification. But the public and affected stakeholders are given a far more limited amount of time to evaluate all of the information and data the agency relied upon. By the time a full analysis of a rule’s impact can be completed, the rule is final and has already taken effect.
- ***The information agencies rely upon is often of poor quality, or is not verifiable.*** Agencies often rely on data that is difficult to obtain or verify independently, that is based on too few data points, or was developed using improper methodology.
- ***Agencies are required by law to consider the impacts a new rule will have on regulated entities,¹⁵ but these reviews are limited, rushed, or ignored altogether.*** Agencies have to take shortcuts to meet tight rulemaking deadlines, and often do not complete the analyses necessary to develop a rule that accomplishes its purpose without inflicting unnecessary harm.

II. A CASE STUDY ON REGULATORY DYSFUNCTION: THE “WATERS OF THE UNITED STATES RULE”

The revised definition of “Waters of the United States” (WOTUS) issued jointly by the EPA and the U.S. Army Corps of Engineers (Corps) on June 29, 2015,¹⁶ expands federal Clean Water Act jurisdiction far beyond the limits explicitly established by Congress and affirmed by the courts. The rule gives EPA and the Corps unprecedented permitting and enforcement authority over land use decisions that Congress intentionally reserved to the States.

The WOTUS rule is a critical example of the type of regulatory mess that results when agencies fail to comply with Congressional mandates. This section details many of the

Regulatory Impact Analysis of the Proposed Revision to the National Ambient Air Quality Standards for Ground-Level Ozone, pp. ES-8, ES-9 (November 2014)).

¹⁵ See, e.g., Executive Order 12,866 (1993) (requiring interagency economic review of “major rules” that are likely to have an annual effect on the U.S. economy of \$100 million or more); Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.* (requiring federal agencies to consider the impact their proposed rules will have on small businesses and small governments). Independent agencies such as FCC, SEC, CFTC, and OCC are not bound by this Executive Order.

¹⁶ 80 Fed. Reg. 37,054 (June 29, 2015).

fundamental problems with the WOTUS rule. The agency's procedural failures are detailed in later sections.

1. The WOTUS Rule Greatly Expands Federal Jurisdiction Through Complex Definitions.

The rule contains several key new definitions. These new definitions, while important by themselves, also fundamentally transform other existing Clean Water Act definitions. Besides being extremely difficult to fully understand, the interplay of these new and existing definitions has the potential to fundamentally change the relationship between the federal government and the states—all in the absence of any new Congressional directive. Importantly, the WOTUS Rule actually fails to define two critical terms used throughout the rule: “waters” and “dry land”. The final rule preamble lists several types of features that are “waters” but then inexplicably states that features will be “identifiable by water...”¹⁷ The second undefined term is “dry land” – which is used throughout the rule to describe certain types of features, mostly those intended to be excluded from the rule. The agencies concluded that “there was no agreed upon definition given geographic and regional variability”.¹⁸ Considering the complex terms the agency chose to define, it is quite telling that they were unable to define what is water and what is dry land. The new key definitions the agencies decided to include are:

- **“Significant nexus”** - The final WOTUS rule states that any chemical, physical, or biological effect on jurisdictional waters not thought to be “speculative or insubstantial” will be considered “significant.” This so-called “significant” effect can be caused by a single water or wetland or “in combination with other similarly situated waters in the region.” The practical result of the Agencies’ approach is that, if **any** effect exists, it is deemed significant. Moreover, a land user will need to consider not only the effect of the water or wetland on his property, but also the combined effects of other “similarly situated” waters throughout an entire watershed to determine if a nexus exists.¹⁹ This expansion of federal authority is totally unjustified. The concept of a “significant nexus” historically arose in the narrow context of **wetlands** areas that actually abutted—and were therefore “inseparably bound up with”—traditional navigable waters.²⁰ Now, the WOTUS rule requires an esoteric inquiry into whether an isolated water or wetland could – on its own or in combination with other similar waters -- theoretically have an impact on (or be impacted by) any other water within an entire watershed of a traditional navigable water, interstate water or territorial sea. The meaning of “significant nexus” in the context of chemical, physical, and biological effects could occupy the federal courts for years to come.
- **“Tributary”** - The Agencies’ definition of “tributary” is extraordinarily vague and overbroad. A “tributary” need only demonstrate the bare minimum evidence (including

¹⁷ 80 Fed. Reg. 37055 fn 1 (June 29, 2015).

¹⁸ *Id.* at 37099

¹⁹ The final rule provides a vague and unhelpful explanation of what it means to be “similarly situated”: “waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters.” 80 Fed. Reg. 37,108 (June 29, 2015).

²⁰ *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 at 172 (2001) (quoting *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985)).

computer-generated evidence, irrespective of actual field conditions) of a water's flow through any channel, a bed, bank and ordinary high water mark. A tributary can be anything that "contributes" even the tiniest amount of water during rare, extreme precipitation events. A tributary may contribute water to major waters by an "indirect" route through another "water," which in turn also could convey only small, infrequent flows via indirect routes. A ditch could be a tributary, if it includes areas that can be characterized as "wetland" anywhere along its entire length, or if they occasionally receive stormwater overflow from any "wetland" or other water. Projects with any land disturbance that includes a ditch are much more likely to trigger a "dredge and fill" permit, and specifically an individual permit instead of a Nationwide permit under section 404 of the Clean Water Act (CWA). Businesses will have to incur the cost and project delays of many more of these permits—which EPA itself has estimated to have a median cost of \$155,000.²¹

- **"Adjacent Waters"** – The application of the term "adjacent" has historically only been used to bring wetlands under federal jurisdiction; however, the final WOTUS rule significantly expands the application of the term to bring "adjacent waters" under federal jurisdiction. The term "adjacent waters" also creates a new term – "neighboring" – which is lengthy, expansive and problematic in its own right. These definitions not only expand the universe of jurisdictional waters far beyond the traditional concept of "adjacency" (and the Supreme Court's interpretation of that concept), they create profound uncertainty as to which waters are likely to be jurisdictional.²²

Together, these definitions not only expand CWA jurisdiction well beyond anything Congress could have intended to include in the term "navigable waters," but they leave land users with virtually no way to assess the status of their local water, short of undertaking a complex and costly watershed study. A facility may find itself in WOTUS for the first time because it is "adjacent" to or "neighboring" a water, has one or more ditches that are a "tributary," or contains a water that somehow has combined "significant" effects with other "similarly situated" waters to create a nexus.

Very often, the new definitions will create federal Clean Water Act jurisdiction over a vast geographic area previously regulated by the states. The extraordinarily broad scope inhibits the ability of a land owner to make any reasonable judgment concerning the jurisdictional status of any specific, local water. Moreover, by considering a particular water "in combination with" other waters located in such a broad region, the Agencies would examine the cumulative impacts of multiple waters, ranging from large to very small, in order to determine the jurisdictional status of a particular water in question.

²¹ EPA and U.S. Army Corps of Engineers, *Economic Analysis of EPA-Army Clean Water Rule* (May 2015), http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/news/final_CWR_eco_analysis.pdf.

²² *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 at 135 (1985).

2. The WOTUS Rule Imposes Massive New Burdens on the States and the Business Community.

Significantly, **EPA itself** developed detailed maps during the WOTUS rulemaking that indicate vastly expanded areas of federal Clean Water Act jurisdiction. These detailed maps, developed by EPA and the U.S. Geological Survey, were released to the public by the House Science Committee on August 27, 2014.²³ The maps indicated more than **8.1 million miles** of rivers and streams across the 50 states could be included under the proposed WOTUS definition.²⁴ This sharply contrasts with a January 2009 EPA report to Congress that estimated **3.5 million miles** of rivers and streams categorized as WOTUS.²⁵ Although the final WOTUS rule differs somewhat from the agencies' original proposal, the signification overreach of jurisdiction in the final rule remains.

Based on these EPA maps, the WOTUS rule represents a potential expansion in federally jurisdictional stream miles of at least **130%**. Critical to this analysis, and as discussed further below, EPA certified that the WOTUS rule had no significant impact under the Regulatory Flexibility Act since the rule actually narrowed the scope of waters covered and no small entities are made subject to any new requirements under the definitional changes. It is disingenuous and simply not credible for EPA on the one hand to generate maps demonstrating significant increases in federal jurisdiction, and on the other hand to certify that the rule actually narrows the scope of federal jurisdiction.

Likewise, analyses by the states of their own waters reveals that the revised definition would increase the amount of stream miles under federal jurisdiction by orders of magnitude. For example, the state of Kansas has estimated that the proposed rule definition of "tributary" would increase the amount of jurisdictional stream miles from around 30,000 miles to 174,000 miles, as shown below, an increase of approximately **460%**.²⁶

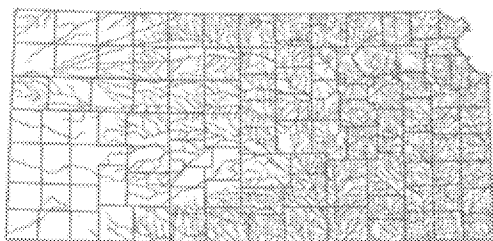
²³ Press Release, House Committee on Science, Space & Technology, "Smith: Maps Show EPA Land Grab" (August 27, 2014) (the map hyperlink is embedded in the release).

²⁴ EPA and the Corps consider these revised maps to be good indicators of the extent of federal jurisdiction. The agencies noted that "[w]hen considering whether the tributary being evaluated eventually flows to [a navigable] water, the tributary connection may be traced using direct observation or U.S. Geological Survey maps, aerial photography or other reliable remote sensing information, or other appropriate information." 79 Fed. Reg. 22,202 (April 21, 2014) (emphasis added).

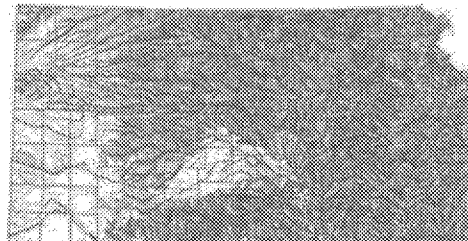
²⁵ EPA Office of Water, National Water Quality Inventory: Report to Congress, EPA 841-R-08-001 (January 2009).

²⁶ *Senate Legislative Hearing on S. 1140, The Federal Water Quality Protection Act Before the S. Comm. on Environment and Public Works*, 114th Cong. (May 19, 2015) (Statement of Susan Metzger, Assistant Secretary, Kansas Department of Agriculture) ("Currently, in what's approved by EPA as our waters of the U.S. in the absence of the proposed rule, is what we consider those waters with designated uses that are by state statute put into our state surface water quality standards, and that encompasses about 30,000 – a little better than 30, 000 – stream miles in Kansas. As we interpret the blanket definition of "tributary" in the proposed rule, that would result in about 174,000 stream miles. That's a 460% increase.").

Figure 4:



Current WOTUS Streams in Kansas



"Ephemeral" Streams Under Proposal

The expanded jurisdictional areas depicted in maps prepared by EPA and the States, respectively, are based primarily on the inclusion of “ephemeral” streams—those that only flow after rains, perhaps only once every few years—as waters of the U.S. Ephemeral streams are currently regulated in the majority of States as “waters of the State.”²⁷ Regulating these waters (which look more like land than “waters” to most people)—and any small wetlands and ponds “adjacent” to them—as WOTUS would be one of the largest regulatory expansions in history.

Although the WOTUS rule is ostensibly intended to simply clarify the scope of federal jurisdiction, the rule will federalize a much larger universe of clean water programs now run by States and localities:

- Stormwater programs run by municipalities will be required to impose more stringent controls on facilities with parking lots, storage pads, or other large paved areas. These facilities would become subject to more stringent stormwater management requirements, potentially including the requirement to obtain National Pollutant Discharge Elimination System (NPDES) permits for the first time, and to treat their stormwater before it leaves the property. This is likely to impact grocery stores, shopping centers, big box stores, stadiums, airports, schools, churches, hospitals, and many other kinds of commercial and institutional facilities;
- The revised WOTUS definition requires businesses to update and expand their Spill Prevention, Control, and Countermeasure (SPCC) Plans under section 311, and their stormwater discharge permits/plans under section 402;
- States will be immediately responsible for developing and issuing tens of thousands—maybe hundreds of thousands-- of new and revised NPDES point source permits to sources under section 402;
- States will also be required to establish water quality standards under section 303 for all newly regulated waters—including potentially 4.6 million miles of “ephemeral” tributaries, and innumerable small wetlands and ponds;

²⁷ The Association of State Wetland Managers, “Report on State Definitions, Jurisdiction, and Mitigation Requirements in State Programs for Ephemeral, Intermittent and Perennial Streams in the United States” (April 2014).

- The states will be required to certify that Federal actions meet those new water quality standards under section 401;
- The expansion of jurisdictional waters is also likely to result in a greater number of “impaired” federal waters under section 303, with additional burdens on States to evaluate and list these waters, and assign Total Maximum Daily Load (TMDL) pollutant caps to these waters; and,
- States will be required to implement their own TMDLs, or EPA-issued TMDLs, to achieve the new water quality standards for each newly regulated feature.

The states would be responsible for implementing all of these expanded duties within their existing budgets and staffing levels. Because businesses depend on being able to get state-issued permits within a reasonable timeframe, the additional workload the revised definition would place on the states would become a serious obstacle to commercial activity.

3. Real-World Impacts of the WOTUS Rule on Counties and Local Jurisdictions

The WOTUS rule would impose a particularly heavy regulatory burden on counties and local government jurisdictions. Much of this burden would come in the form of permits and approvals never before required to conduct routine infrastructure maintenance. According to the National Association of Counties, the nation’s counties are responsible for building and maintaining 45% of the roads in 43 states.²⁸ Because the WOTUS Rule defines “tributaries” to include ditches, flood channels, and other infrastructure, counties would immediately be required to obtain section 402 and/or 404 permits for work in those areas that may disturb soil or otherwise add any “pollutant” that could affect the “tributary.”²⁹ County irrigation districts, flood control districts, road departments, weed control districts, pest control districts, etc., would be required to obtain these permits in addition to section 402 permits for discharges to these waters.

Individual section 404 permits currently may take more than a year to obtain, and have an estimated median cost of \$155,000.³⁰ These permits are required by the CWA, regardless of the environmental benefit, if any, and permittees’ lack of resources to address this new federal requirement.³¹

²⁸ Testimony of Warren “Dusty” Williams, General Manager, Riverside County Flood Control & Water Conservation District, submitted on behalf of the National Association of Counties, before the House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment (June 11, 2014) at page 2.

²⁹ The final WOTUS rule does contain some exclusions for particular features under very specific circumstances, but the exclusions are complex, require technical analyses to determine if they apply, and are likely to be interpreted very narrowly. For example, some ditches are excluded from federal jurisdiction, but only if they were not originally excavated in a “tributary” as broadly defined by the rule, not a relocated “tributary” and do not drain a wetland. 80 Fed. Reg. 31705 (June 29, 2015). However, any segment of such a ditch that intersects with a wetland is jurisdictional, and portions of the ditch up and down the stream of that wetland intersection must be assessed on a case by case basis. *Id.* at 37098.

³⁰ EPA and U.S. Army Corps of Engineers, *Economic Analysis of EPA-Army Clean Water Rule* (May 2015), available at http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/news/final_CWR_eco_analysis.pdf.

³¹ The Lake County, Oregon, Road Department, for example, located in a county with 7,711 residents in 2012, must maintain the county’s road network, including ditches, culverts, and bridges, with only a dozen or so employees.

III. EPA DOES NOT FOLLOW CONGRESS' REGULATORY DIRECTIVES

Since the first agency was established, Congress has attempted to control agency rulemakings through legislation, oversight and funding, but with little to no impact. Many of the adverse impacts of regulations would have been addressed by the agencies (or at least identified) had they merely implemented congressional mandates concerning the impact on jobs, the use of the best data in rulemakings, the impact of the regulations on small business, state and local governments, and the cumulative impact of regulations. As described below, the WOTUS Rule provides a textbook example of how a federal agency failed to follow congressional directives in a significant rulemaking.

A. The EPA Fails to Comply with the Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act ("UMRA") requires federal agencies to assess the effects of a rule on state and local governments and the private sector before imposing mandates on them of \$100 million or more per year without providing federal funding for state and local governments to implement the mandate. In essence, UMRA is intended to prevent federal agencies from shifting the costs of federal programs to the states. In the WOTUS rule, the EPA and the Corps certified that "[t]his action does not contain any unfunded mandate under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995, (12 U.S.C. §§ 1531-1538), and does not significantly or uniquely affect small governments."³² This definitive statement is clearly at odds with the facts, however.

For example, according to the National Association of Counties, 1,542 of the 3,069 counties in the nation (50%) have populations of less than 25,000,³³ are considered "small governments" and are therefore protected by both the UMRA and RFA. These counties are responsible for building and maintaining 45% of the roads and associated ditches in 43 states,³⁴ which is where some of the largest permitting impacts of the WOTUS rule are expected to be felt. As a result of the WOTUS rule, these counties will be required to bear the cost of obtaining Clean Water Act permits in greatly-expanded areas, but will receive no additional federal funding for the increased responsibility imposed by the rule.

The EPA should fulfill its statutory obligation under UMRA by not imposing unfunded mandates over \$100 million on state and local governments without providing funding.

See www.lakecountyor.org/government/road.master.php. Brown County, North Dakota officials have also cited concerns about WOTUS permit delays "for something as simple as replacing a culvert." Gary Vetter, Assistant to the Brown County Commissioners, cited in "EPA's Proposed Definition Change Concerns County, Thune," Aberdeen News, Local News (posted August 16, 2014).

³² U.S. Environmental Protection Agency & U.S. Department of the Army, Economic Analysis of the EPA-Army Clean Water Rule (May 2015), at 61, available at http://www2.epa.gov/sites/production/files/2015-05/documents/final_clean_water_rule_economic_analysis_5-15_2.pdf. See also Definition of "Waters of the United States" Under the Clean Water Act; Proposed Rule, 79 Fed. Reg. 22,220 (April 21, 2014).

³³ Testimony of Warren Williams, General Manager, Riverside County Flood Control & Water Conservation District, submitted on behalf of the National Association of Counties, before the House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment (June 11, 2014) at page 2.

³⁴ *Id.*

B. The EPA Failed to Comply with the Regulatory Flexibility Act

Congress passed the Regulatory Flexibility Act (“RFA”) in 1980 to give small entities a voice in the federal rulemaking process.³⁵ Put simply, the RFA requires federal agencies to assess the economic impact of their planned regulations on small entities and to consider alternatives that would lessen those impacts. The RFA requires each federal agency to review its proposed and final rules to determine if the rule in question will have a “significant economic impact on a substantial number of small entities.”³⁶ If the rule is expected to have such an impact, the agency must assess the anticipated economic impacts of the rule and evaluate whether alternative actions that would minimize the rule’s impact would still achieve the rule’s purpose.

Since 1996, the EPA specifically has been required to conduct Small Business Advocacy Review Panels when a planned rule is likely to have a significant impact. This process is supposed to occur before a rule is even proposed. Small entity representatives—who speak for the sectors that are likely to be affected by the planned rule—advise the Panel members on real-world impacts of the rule and potential regulatory alternatives. The Panel process is the best opportunity for the EPA to get face-to-face interaction with small entities and get a sense of the ways that small entities differ from their larger counterparts in their ability to comply with regulatory mandates. Because the Panel occurs early, before the planned rule is publicly proposed, it also represents the best opportunity for small entities to have real input into the final design of a rule.

In the case of WOTUS, the EPA certified without any factual evidence (and contrary to jurisdictional maps the agency itself generated) that the WOTUS rule actually represents a *reduction* in the regulatory burdens affecting small entities, and that the rule would not have a substantive or direct regulatory effect on any small entity, so the RFA doesn’t apply.³⁷ Yet, because the WOTUS rule defines “tributaries” to include ditches, flood channels, and other infrastructure, businesses and small governmental jurisdictions will be subject to section 404 permitting requirements for work in ditches, on roads adjacent to ditches, on culverts and bridges, etc. that disturbs soil or otherwise affects the “tributary.”³⁸ These permits can take more than a year to obtain, at a median cost of \$155,000.³⁹ This is why the U.S. Small Business Administration’s Office of Advocacy publicly advised the EPA and the Corps that they improperly certified the WOTUS proposal under the RFA.⁴⁰

The EPA should satisfy its statutory obligations under the RFA by convening a Small Business Advocacy Review Panel for important proposed regulations, like WOTUS and the Clean Power Plan.

³⁵ 5 U.S.C. §§ 601-612.

³⁶ 5 U.S.C. §605(b).

³⁷ EPA again certified in the final WOTUS rule that the rule will not have a significant economic impact on a substantial number of small entities and that the RFA does not apply. 80 Fed. Reg. 37,102 (June 29, 2015).

³⁸ See fn 29, *supra*.

³⁹ EPA and U.S. Army Corps of Engineers, *Economic Analysis of Proposed Revised Definition of Waters of the United States* (March 2014) at 12.

⁴⁰ Letter from Winslow Sargeant, Chief Counsel for Advocacy, to Gina McCarthy, Administrator, EPA and General John Peabody, Deputy Commanding General, Corps of Engineers, on Definition of “Waters of the United States” Under the Clean Water Act (October 1, 2014) at 4.

C. The EPA Fails to Follow the Information Quality Act

The Agencies' WOTUS rule neither complies with the Information Quality Act (IQA) as implemented under Office of Management and Budget (OMB) guidelines, nor EPA's own information quality guidelines.⁴¹

The Agencies developed the WOTUS Rule based upon EPA's Report, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence. The Report purports to establish a scientific basis for the connectivity of isolated, often evanescent "waters" to traditional "navigable" waters under the CWA. The Agencies argue that the hydrologic "connectivity" of these remote waters, which ultimately reach navigable waters, establishes federal jurisdiction over these waters. The information contained in the Agencies' Report clearly meets the OMB definition of "information." "Information" means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic"⁴²

The information at issue also meets the OMB definition of "influential" information. "Influential" means "that the agency can reasonably determine that the dissemination of the information will have or does have a clear and substantial impact on important public policies"⁴³ The Agencies have directly relied upon the Report in making findings regarding the extent of hydrologic connectivity sufficient to support an assertion of federal jurisdiction. OMB has stated that "influential information" should be held to a heightened standard of quality.⁴⁴ The Report clearly meets the definition of "influential" information that needs to be of the highest quality.

On the date the Agencies published the proposed WOTUS rule, EPA's Science Advisory Board (SAB) had not completed its review of the Report. In fact, the SAB did not complete its review of the Report until September 30, 2014. EPA and the Corps ultimately extended the public comment period until November 14, 2014. But commenters had no opportunity to consider EPA's response to the SAB, and only a limited time to review the final Report before the opportunity to comment had ended. EPA and the Corps should have re-proposed the rule with an updated discussion of the Report, or alternatively, the agencies should have extended the public comment period further to allow for informed input from stakeholders on the information quality of the Report.

The EPA should follow the IQA by fully disclosing data and reports used to justify its positions and utilizing the best peer-reviewed science.

⁴¹ See Treasury & General Governmental Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554 § 515(a); 44 U.S.C. § 3516 (notes); EPA Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency, EPA/260R-02-2008 (October 2002).

⁴² OMB Guidelines § V.5.

⁴³ OMB Guidelines § V.9

⁴⁴ 67 Fed. Reg. 8,452 (February 22, 2002).

D. EPA Has Failed to Conduct the Congressionally Mandated Employment Impacts Evaluation

Congress has debated whether environmental regulations cause job loss and adversely impact communities since the first environmental laws were debated in the early 1970's. During the debate over the 1972 Clean Water Act claims were raised by industry that environmental regulations cost jobs. While there was great debate over the issue, Congress specifically wanted to resolve this issue of whether environmental regulations cost jobs.

Congress addressed this issue five times over two decades by placing similar provisions in the five major environmental statutes directing EPA to conduct continuing evaluations on potential loss or shifts in employment which may result from the issuance of regulations under the respective statutes. The congressional intent behind these provisions is clear: Congress knew that regulations, such as those issued under the Clean Water Act and Clean Air Act, would impact the operations of facilities, cause loss of job, and adversely impact communities but it did not know if such losses were the primary cause or if there were other causes. Congress wanted to resolve this issue but it needed information from the agencies issuing the regulations.

During the 92nd Congress (1971 – 1973), the debate over the Federal Water Pollution Control Act Amendments of 1972 addressed this issue for the first time. As part of the floor debate, Representative William D. Ford of Michigan offered an amendment mandating the continuous evaluation of the potential loss or shifts of employment resulting from the issuance of water regulations.⁴⁵ In support of the amendment, Representative Bella Abzug of New York stated:

⁴⁵ 33 U.S.C. § 1367(e) (1972)(e) Investigations of Employment Reductions, The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this chapter, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this chapter.) In subsequent statutes the job impact provision was split into two sections; one mandating the continuous evaluation of job impacts and one section authorizing employees impacted by the regulation to seek an on the record hearing with the administrator of EPA. See also: ⁴⁵ The Clean Air Act, 42 U.S.C. § 7621(a), (1977); § 321(a); The Solid Waste Disposal Act, 42 U.S.C. § 6971 (1976); § 7001(e); The Toxic Substances Control Act, 15 U.S.C. § 2623 (1976); § 24(a); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610 (1980); § 110(e).

Mr. Chairman, I am pleased to rise in support of the amendment, which would require the Environmental Protection Administration to study and evaluate, on a continuing basis, the effect of effluent limitations upon employment...this amendment will allow Congress to get a close look at the effects on employment of legislation such as this, and will thus place us in a position to consider such remedial legislation as may be necessary to ameliorate those effects. This is a good amendment and I urge its adoption.⁴⁶

This amendment laid the framework for similar provisions in future legislation.⁴⁷

The 95th Congress (1977 – 1979), again addressed the effects of regulation on employment in debate over the Clean Air Act. The Committee on Public Works noted:

[I]t has been argued that environmental laws have in fact been responsible for significant numbers of plant closings and job losses. In any particular case in which a substantial job loss is threatened, in which a plant closing is blamed on Clean Air Act requirements, or possible new construction is alleged to have been postponed or prevented by such requirements, the committee recognized the need to determine the truth of these allegations. For this reason the committee agreed to...a mechanism for determining the accuracy of any such allegation.⁴⁸

In the Clean Air Act Amendments of 1977 Congress enacted a similar provision mandating EPA to conduct continuous evaluations of potential loss or shifts of employment.⁴⁹ That provision is codified as section 321(a) of the Clean Air Act, which reads:

(a) Continuous Evaluation of Potential Loss or Shifts of Employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.⁵⁰

Subsequent Congresses enacted similar legislative provisions in the Solid Waste Disposal Act,⁵¹ the Toxic Substances Control Act,⁵² and the Comprehensive Environmental Response, Compensation and Liability Act.⁵³

⁴⁶ 1 Environmental Policy Division of the Cong. Research Serv., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 658-59 (1973) (Remarks of Rep. Abszug).

⁴⁷ See 95 Cong. House Report 294 (Stating that "Section 304 of the committee bill [the Clean Air Act] is based on a nearly identical provision in the Federal Water Pollution Control Act.")

⁴⁸ *Id.*

⁴⁹ See generally 95 Cong. Conf. Bill H.R. 6161; CAA 77 Leg. Hist. 24.

⁵⁰ 42 U.S.C. § 7621(a) (1977); § 321(a).

⁵¹ 42 U.S.C. § 6971 (1976); § 7001(e).

⁵² 15 U.S.C. § 2623 (1976); § 24(a).

⁵³ 42 U.S.C. § 9610 (1980); § 110(e).

Unfortunately, EPA never conducted any of the evaluations of employment impacts required by the five environmental statutes. In response to a Freedom of Information Act request from the U.S. Chamber, EPA states that it cannot find any records that indicate it prepared a continuing evaluation of the potential loss or shifts of employment resulting from its regulations. Specifically, EPA stated: “after conducting searches, neither the Office of Air and Radiation nor the Office of Policy were able to find any documents pertaining to your request”.⁵⁴

Therefore, the debate that started over 45 years ago and which resulted in Congress enacting provisions that would help it understand the adverse effects that environmental regulation have on employment remains unresolved due to EPA’s failure to undertake the evaluations mandated multiple times by Congress. Congress wanted information to develop remedial legislation, if needed to protect jobs while it protects the environment.

The EPA must comply with its statutory obligation under the Clean Water Act and conduct a continuing evaluation of the employment impacts of CWA regulations.

E. The EPA Failed to Examine Inconsistent or Incompatible Regulations as Required by Executive Order 12,866

Executive Order 12,866⁵⁵ requires federal agencies to conduct several analyses prior to proposing or finalizing new regulations. The Executive Order makes agencies responsible to ensure that a new regulation is necessary (as opposed to a non-regulatory alternative); put another way, the agency must show that a problem exists that can **only** be successfully addressed through a regulation. In the case of the WOTUS rule, neither EPA nor the Corps showed that waters currently regulated by states and localities are not adequately protected. EPA and the Corps did not explain how the public would be better off if waters regulated by the states were transformed into areas under federal jurisdiction. Although EPA and the Corps *inferred* that the states were not doing an adequate job of protecting surface waters, it did not make the kind of showing that would typically be required to take federal control over a state’s water quality program.⁵⁶ Similarly, the ozone NAAQS was updated in 2015 before the 2008 standard was even fully implemented.

In the case of WOTUS, the final rule was issued at a time when two other major rules (Clean Power Plan and the Ozone NAAQS standard) were also issued. To be clear, during a six-month period of time in 2015, EPA imposed on the states three major rules that have significant impacts on this nation’s economy and infrastructure. When issuing these three rules in 2015, the EPA should have fully considered how each rule, if finalized, might affect regulated entities’ ability to comply with the other two.

⁵⁴ Letter from Jim DeMocker, Acting Director, EPA Office of Policy Analysis and Review to William L. Kovacs, U.S. Chamber of Commerce, Freedom of Information Request No. EPA-HQ-2012-001352 (June 14, 2013).

⁵⁵ See Executive Order 12,866 (Sept. 30, 1993) available at https://www.whitehouse.gov/sites/default/files/omb/inforeg/EO12866/EO12866_10041993.pdf.

⁵⁶ 33 U.S.C. § 304(l)(3).

For example, the EPA itself projects that the Clean Power Plan will cause significant coal-fired electric generating capacity to retire by 2022.⁵⁷ To replace this generating capacity, utilities will need to construct fuel delivery infrastructure such as pipelines, storage, railroad track, and improved roads. In order to compensate for a lack of generating capacity, these infrastructure projects will have to be completed before the existing coal-fired generating units are taken off-line. Yet these projects will be subject to more extensive permitting and reviews by virtue of the WOTUS rule.

The EPA did not properly account for the increased costs and delays that utilities, pipeline companies, railroads, and other companies will face in complying with the WOTUS rule, which is made necessary because of the need to comply with the Clean Power Plan.

The EPA must consider whether a conflict exists regarding regulated entities' ability to comply with stricter ozone standards, the redefinition of WOTUS, and the Clean Power Plan at the same time pursuant to Executive Order 12,866.

F. The EPA Failed to Analyze the Cumulative Impacts of the Regulations as Required by Executive Order 13,563

Executive Order 13,563, issued by the Obama administration in 2011,⁵⁸ even more clearly calls on federal agencies to review and understand the cumulative impacts of their regulatory programs. Section 1(b)(2) provides that each agency must, among other things, “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, *taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.*”⁵⁹ Again, the EPA should have complied with this Executive Order when it planned to develop three massive rulemakings that would be timed to take effect virtually one on top of the other.

The EPA pursuant to Executive Order 13,563 should conduct a cumulative review of costs imposed on regulated entities by the almost simultaneous impact of stricter ozone standards, the redefinition of WOTUS, and the Clean Power Plan.

G. What the EPA Would Have Discovered If It Had Used Congressionally and Executive Mandated Analytical Regulatory Tools

If the EPA had chosen not to ignore the vast array of analytical requirements under the Clean Water Act, the Unfunded Mandates Reform Act, the Information Quality Act, and the Regulatory Flexibility Act, as well as Executive Orders 12,866 and 13,563, it would have discovered serious inconsistencies and conflicts between its three rules. Here are two examples of those inconsistencies as they relate to WOTUS specifically:

⁵⁷ See EPA, “Regulatory Impact Analysis for the Clean Power Plan Final Rule,” (October 23, 2015) available at <https://www.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf>.

⁵⁸ Executive Order 13,563, “Improving Regulatory and Regulatory Review,” 76 Fed. Reg. 3,821 (Jan. 18, 2011).

⁵⁹ *Id.* at 3,821 (emphasis added).

- As noted above, the massive new infrastructure requirements that are at the heart of the Clean Power Plan will be complicated, delayed and made more expensive by the expanded number of Clean Water Act permits required by the WOTUS rule. In addition to the cost of applying for federal permits, infrastructure developers will have to pay mitigation costs for wetlands restoration, which often approach or exceed all other project costs.
- In its economic analysis of the WOTUS rule, the EPA based its conclusion that the rule would only increase the amount of federal jurisdictional waters under the CWA by 2.84% to 3.65% on a *very* small sample of negative determinations from two preceding years, essentially using just a tiny slice of pre-WOTUS determinations. The EPA ignored conflicting evidence from federal and state authorities that the rule could impose anywhere from a 300% to 800% increase in federal jurisdictional waters. EPA is supposed to work with these stakeholders to discuss these impacts, instead of ignoring them or denying them altogether. By ignoring these congressional mandates for developing effective regulations, the EPA fails to secure an understanding of the real world impacts of its rules.

Undoubtedly, more examples of inconsistencies will be discovered as these three major regulations continue to move through the regulatory and judicial process and eventually must be implemented. Much of the confusion and deficiencies stemming from these inconsistencies could have been avoided had the EPA conducted a more thorough analysis of the cumulative impacts of these regulations.

H. EPA Violated Anti-Lobbying Laws

In addition to the legal and procedural deficiencies described above, the U.S. Government Accountability Office (GAO) also determined that during the rulemaking process, EPA violated prohibitions against publicity or propaganda and grassroots lobbying and violated the Antideficiency Act, 31 U.S.C. sec. 1341(a)(1)(A).⁶⁰ In particular, the GAO determined that EPA's use of a Thunderclap social media campaign during the rulemaking process was unlawful. Thunderclap is a social media tool that first gathers "supporters" for a particular cause, then simultaneously blasts a message to each supporter's social media accounts, including Facebook, Twitter, and Tumblr.⁶¹ The purpose is to have the original message reach everyone who views its supporters' social media pages. Accordingly, EPA first solicited and secured 980 supporters for its message promoting the WOTUS rule. However, and crucial to this analysis, when EPA's message was re-posted on supporters' accounts using Thunderclap, the message no longer identified EPA as the source. The GAO determined that these unattributed messages constituted "covert propaganda" and violated the Antideficiency Act.⁶² According to the GAO, the improper communications associated with the Thunderclap campaign were estimated to have reached 1.8 million people.⁶³

⁶⁰ B-326944, Dec. 14, 2015 (Environmental Protection Agency – Application of Publicity or Propaganda and Anti-lobbying Provisions).

⁶¹ www.thunderclap.it/faq

⁶² B-326944, Dec. 14, 2015.

⁶³ *Id.* at 12.

Illegally soliciting support for the WOTUS rule from 1.8 million people is significant. A total of 1,081,166 public comments were received on the WOTUS rulemaking docket. Of those, approximately 1,050,000 comments were generated from mass comment campaigns. In the final WOTUS rule preamble, EPA relied upon that large number of public comments received to support finalizing the rule. Indeed, the Federal Register states that that “over 1 million public comments” were received on the proposed WOTUS rule, and “the substantial majority of which supported the proposed rule.” 80 Fed. Reg. 37,057. These statements are now part of the official rulemaking record, which the agency is using to defend its rule in the ongoing WOTUS litigation.

EPA Administrator McCarthy also testified before Congress about the purported wide public support for the rule, “we have received over one million comments and about 87.1 percent of those comments we have counted so far – we are only missing 4,000 – are supportive of this rule. Let me repeat, 87.1 percent of those one plus million are supportive of this rule.”⁶⁴

In sum, EPA unlawfully solicited support from 1.8 million people for its WOTUS rule. EPA then relied on more than one million mass mailing comments in support to justify its WOTUS rule to the public, before Congress, and will no doubt use the same ginned up “support” to defend the WOTUS rule in court.

In addition to using Thunderclap, EPA hyperlinked official EPA websites and social media pages to external websites that contained clear appeals to the public to contact Members of Congress in support of the WOTUS rule.⁶⁵ The GAO found this activity constituted indirect or grassroots lobbying, in violation of the anti-lobbying provisions of the law.

IV. THE WOTUS RULE CAUSES MASSIVE CONFUSION

Shortly after the WOTUS rule was finalized, lawsuits were filed by at least thirty states and numerous industry groups and environmentalists, all objecting to the scope of the rule or the process by which it was promulgated. Lawsuits were filed in at least twelve different federal district courts and in eight different federal circuit courts of appeal.

Lawsuits were filed in both district courts and courts of appeal because there is no agreement as to which court even has jurisdiction to hear the case. For example, the district court in North Dakota issued an injunction that prevents the rule from being implemented or enforced within the thirteen states that filed lawsuits in North Dakota. The Southern District of Georgia, however, denied a motion for injunction on the grounds that jurisdiction is proper at the court of appeal level; this decision has been appealed to the Eleventh Circuit.

⁶⁴ House-Senate Joint Hearing on State and Local Impacts of Administration’s Proposed Expansion of Waters Regulation Before the S. Comm. on Environment and Public Works and H. Comm. on Transportation and Infrastructure, 114th Cong. (Feb. 4, 2015) (Statement of Gina McCarthy, Administrator of the Environmental Protection Agency).

⁶⁵ B-326944, Dec. 14, 2015.

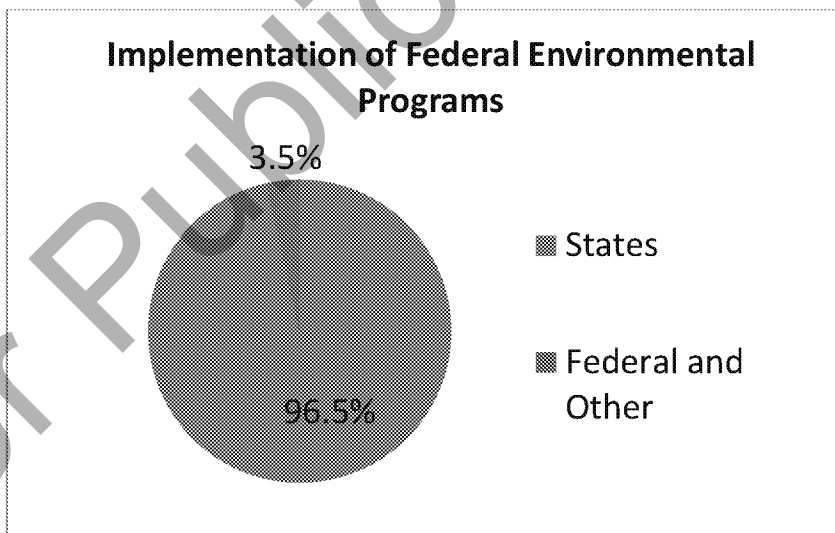
Meanwhile, the lawsuits filed in the courts of appeal have been consolidated and will all be heard in the Sixth Circuit. The Sixth Circuit issued a nationwide injunction of the rule, preventing EPA and the Army Corps from implementing or enforcing the WOTUS rule during the pendency of litigation. A three-judge panel of the Sixth Circuit recently issued a fractured ruling (with three separate opinions) concluding that court has jurisdiction. But parties (including the U.S. Chamber) have requested a rehearing of the jurisdictional issue before the entire Sixth Circuit.

Landowners are now waiting for a decision on the merits of whether the WOTUS rule is lawful or if the agencies must once again start from scratch. The confusion created by the WOTUS rule and the varied potential outcomes of the resulting litigation translate into an environment of uncertainty for landowners and business owners.

V. STATES IMPLEMENT MOST FEDERAL ENVIRONMENTAL REGULATIONS, NOT THE EPA

The real victims of the federal administrative state overreach are the states. According to the Environmental Council of the States (ECOS), the states in 2013 implemented approximately **96.5%** of federal environmental laws through delegated programs.⁶⁶ State agencies also conduct **90%** of all environmental inspections, enforcement actions, data collection, and issue the vast bulk of the permits needed to build or operate a facility.⁶⁷

Figure 5:



Source: ECOS

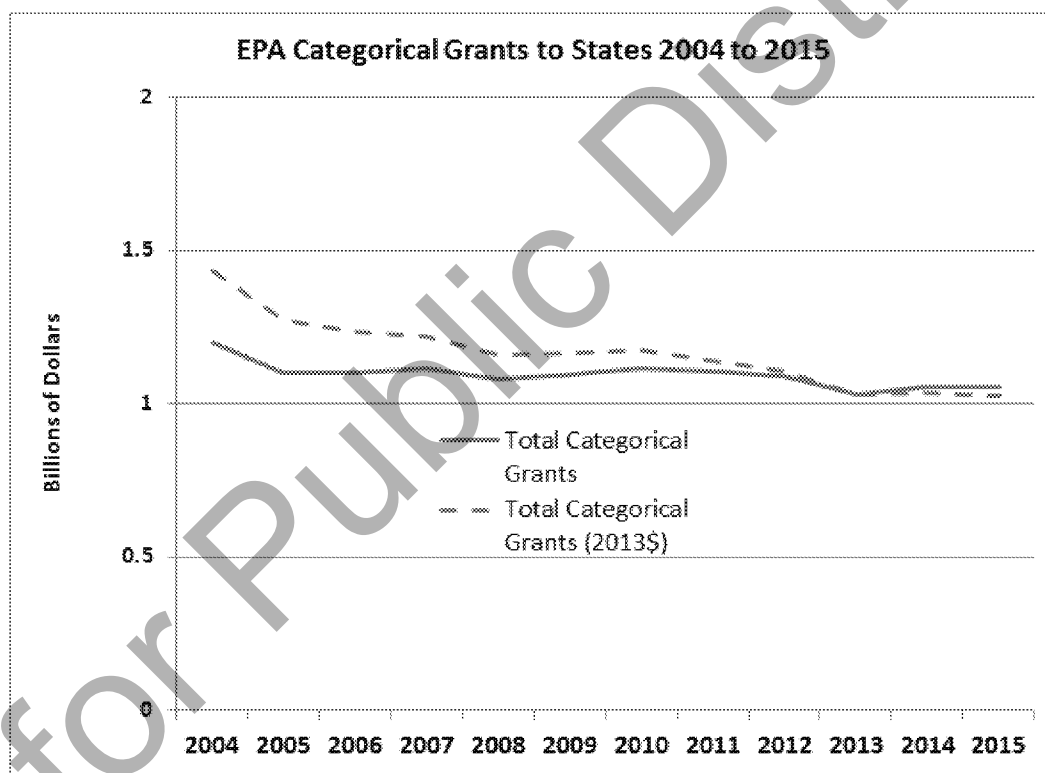
⁶⁶ Testimony of Teresa Marks, Director, Arkansas Department of Environmental Quality and President, Environmental Council of the States, before the House Energy and Commerce Committee, Subcommittee on Environment and the Economy (February 15, 2013) at 3, available at <http://docs.house.gov/meetings/IF/IF18/20130215/100242/HHRG-113-IF18-Wstate-MarksT-20130215.pdf>.

⁶⁷ *Id.*

In a February 15, 2013 hearing before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, an ECOS witness testified that “[S]tates find themselves in 2013 with a lot more [environmental] rules, and the possibility of a lot less money to implement them. States are very unsure how much longer these two trends can continue before the core environmental programs in each state begin to significantly suffer.”⁶⁸

The management of federal environmental programs is a tremendous burden for states, particularly from a time, money and resource perspective. To add to the difficulties that states face, annual budget data collected by the Congressional Research Service between 2004 and 2015 confirms that EPA grants to the states have been flat or, in real terms have steadily declined since 2004.⁶⁹ In 2015, Categorical Grants to the states, the federal funding to states for implementation of EPA regulatory mandates, were about **29% lower** in inflation-adjusted dollars than they were in 2004.

Figure 6:



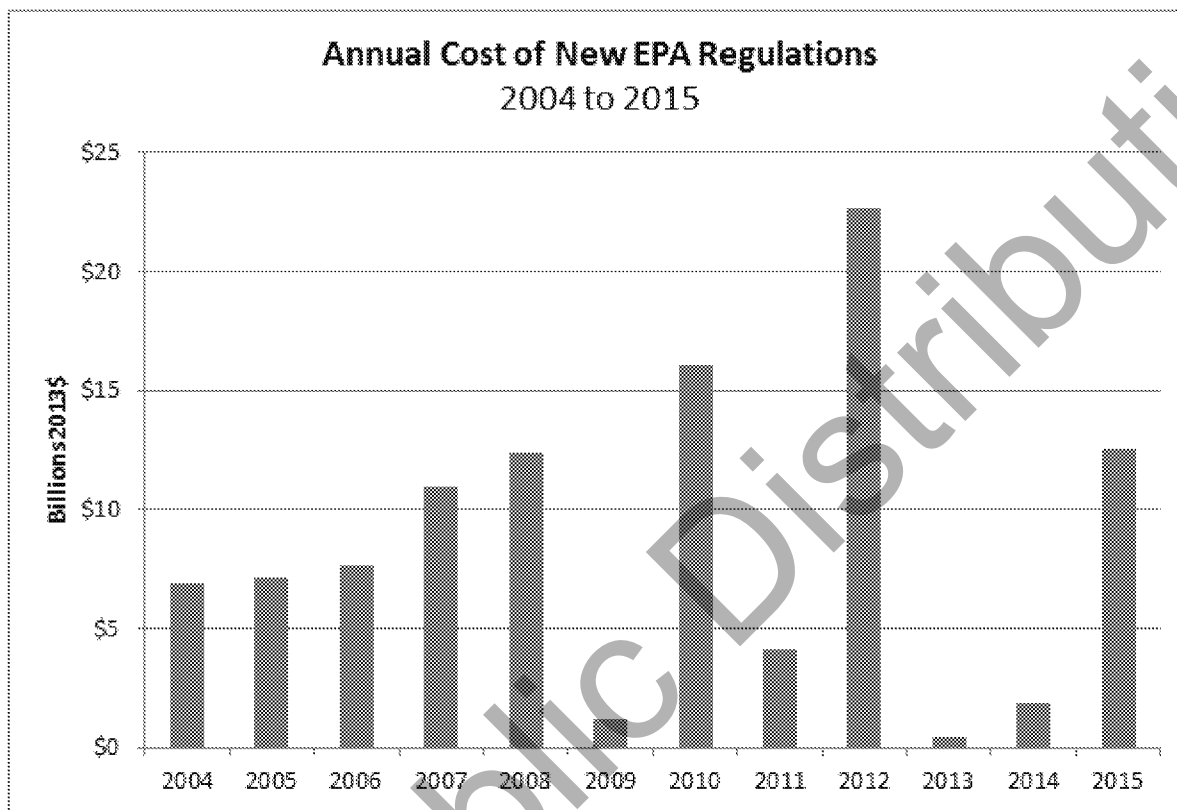
Source: Congressional Research Service

⁶⁸ Testimony of Teresa Marks, Director, Arkansas Department of Environmental Quality and President, Environmental Council of the States, before the House Energy and Commerce Committee, Subcommittee on Environment and the Economy (February 15, 2013) (emphasis added), available at <http://docs.house.gov/meetings/IF/IF18/20130215/100242/HHRG-113-IF18-Wstate-MarksT-20130215.pdf>.

⁶⁹ Likewise, a 2013 GAO report noted that “annual appropriations for these grants have decreased by approximately \$85 million between fiscal year 2004 and fiscal year 2012.” GAO, *Funding for 10 States’ Programs Supported by Four Environmental Protection Agency Categorical Grants*, 13-504R Information on EPA Categorical Grants (May 6, 2013).

At the same time that EPA's real-dollar grant assistance to the states declined **29%**, the agency imposed approximately **\$104 billion** in new annual regulatory obligations (see Figure 7).

Figure 7:



Source: EPA Regulatory Impact Analyses (RIAs) and *Federal Register*

Significantly, as described above, in 2015 alone, EPA issued three new “mega-rules” that impose tremendous burdens on the states: WOTUS,⁷⁰ the Clean Power Plan,⁷¹ and the revised Ozone NAAQS.⁷² Although each of these rulemakings imposes major new responsibilities on states, the agency certified in each case that the regulation imposed **no unfunded mandates**. In fact, the EPA has seldom acknowledged that any of its regulations impose unfunded mandates on the states.

⁷⁰ EPA and U.S. Army Corps of Engineers, “Definition of “Waters of the United States,” Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015).

⁷¹ EPA, “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,” Final Rule, 80 Fed. Reg. 64, 662 (October 23, 2015).

⁷² EPA, “National Ambient Air Quality Standard for Ozone,” Final Rule, 80 Fed. Reg. 65, 292 (October 26, 2015).

Figure 8:



Source: EPA Regulatory Impact Analyses (RIAs) and *Federal Register*

States have complained in recent years that EPA increasingly ignores them or takes unilateral actions that the states disagree with. Rather than being treated by EPA as co-regulators with complementary powers, states complain that their views and concerns are increasingly ignored by EPA. As one state official put it, “the State role is now **less partner and more pawn**.”⁷³ EPA’s failure to consult with the states violates the spirit, if not the letter, of Executive Order 13,132, “Federalism.”⁷⁴

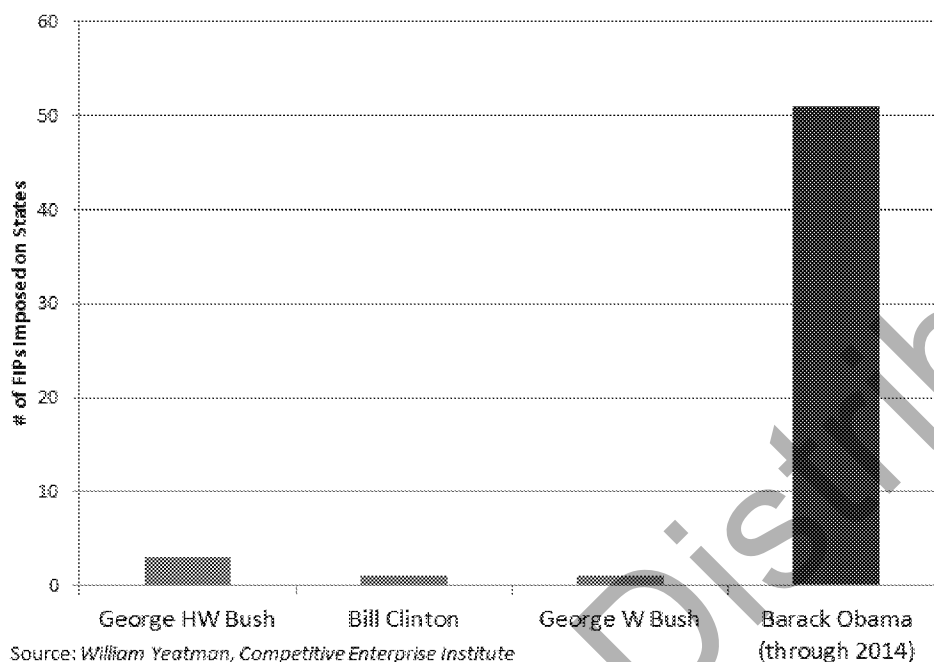
One result of EPA’s failure to adequately consult with its state partners is a substantial increase in the number of Federal Implementation Plans (FIPs), representing an unprecedented federal takeover of state environmental priorities and programs. As the chart below clearly shows, the EPA under the current Administration has in fact imposed far more FIPs on states than any previous administration, ever. These FIPs include 13 dealing with regional haze, 9 relating to greenhouse gas permitting programs, and 28 for the cross-state air pollution rule.

⁷³ Letter from Becky Keogh, Director, Arkansas DEQ to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (March 2, 2016) at 1 (emphasis added). Available at <http://www.epw.senate.gov/public/cache/files/89138698-8bc6-4ccc-b624-cebc81b3e251/arkansas.pdf>.

⁷⁴ 64 Fed. Reg. 43,255 (August 10, 1999).

Figure 9:

Clean Air Act FIPs by Administration



By requiring states to implement WOTUS, Clean Power Plan, and ozone NAAQS simultaneously, the inconsistent segments of each statute make planning impossible. While the EPA ignored potential inconsistencies created by issuing all three rules simultaneously, states simply cannot ignore the problems of implementing all three at the same time. For example, in writing a State Implementation Plan (SIP) for the Ozone NAAQS, states cannot ignore the probable shifts in criteria pollutant levels resulting from the Clean Power Plan and the expanded redefinition of WOTUS. Because the Clean Power Plan could require significant changes to the nation's electric generation infrastructure, reshuffling of the deck would dramatically shift the current map of criteria pollutant concentrations as power companies site new generation facilities away from existing sites. In particular, this could undermine the ability of many states to meet the current air and water standards as the states simultaneously implement WOTUS, Clean Power Plan, and ozone NAAQS.

VI. LEGISLATIVE RECOMMENDATION

The Regulatory Accountability Act Requires More Extensive Rulemaking Procedures for the Most Important New Federal Rules

A modernized APA is needed to restore the kinds of checks and balances on federal agency action that the 1946 APA—the “bill of rights” for the regulatory state—intended to provide the American people. Congress must get the rulemaking process right since poorly written rules flood the federal judicial system as judges are asked to do the job that agencies

should. S. 2006, the Regulatory Accountability Act of 2015, which rests in the jurisdiction of this committee, would address this deficiency. The legislation would put balance and accountability back into the federal rulemaking process for the most critical rules, without undercutting vital public safety and health protections. The bill focuses on the process agencies (including independent agencies) must use when they write the most important new regulations. The Regulatory Accountability Act would achieve these important goals for major and high-impact rules by requiring the following:

- Defining “high-impact” rules as a way to distinguish the 1-3 rulemakings each year that would impose more than \$1 billion a year in compliance costs.
- Codifying many of the regulatory requirements in Executive Order 12866 and applying them to both executive and independent agencies.
- Involving the public early in the process by allowing the public to propose alternatives for accomplishing the objectives in the most effective manner.
- Requiring agencies to select the least costly regulatory alternative that achieves the regulatory objective, unless the agency can demonstrate that a more costly alternative is necessary to protect public health, safety, or welfare.
- Requiring agencies to consider the cumulative impacts of regulations and the collateral impacts their rules will have on businesses and job creation.
- Providing for on-the-record administrative hearings for the 1-3 most costly rules each year to verify that the proposed rule is fully thought out and well-supported by good scientific and economic data.
- The rulemaking should be based upon the best available scientific, technical or economic information.
- Restricting agencies’ use of “interim final” regulations, where the public has no opportunity to comment before a regulation takes effect.
- Independent agencies would also have to comply with the new APA requirements.

For the most costly rules, the opportunity for a hearing – with the ability to ask specific questions to the agency – gives stakeholders the best way to verify the underlying data an agency relies on, as well as the regulatory alternative the agency selected. In typical APA notice and comment rulemaking also known as “informal rulemaking,” the agency is free to discount written comments and information with which it does not agree. Stakeholders have a very limited ability to inquire directly of the agency why various choices were made and get a response. Even if those stakeholders get contrary data or other information into the rulemaking docket, a reviewing court typically defers to the agency’s determination of which data to rely on. Under S. 2006, however, interested parties in the most costly rulemakings can petition the

agency to probe the data and evidence an agency is using through an administrative hearing.⁷⁵ This hearing would be on-the-record, meaning that a transcript of the proceedings would become part of the docket for the rulemaking. This transcript would be available for any subsequent legal challenges to the rule.

In rulemakings involving the most costly regulations (*\$1 billion or more* per year), where there is concern about whether an agency has grounded its regulation on adequate, reliable data and whether the agency has fully considered reasonable alternatives, an on-the-record hearing is the most effective way to ensure that these critical issues are explored in a manner that is open and transparent.

The Occupational Safety and Health Act (OSHA) currently provides for a similar type of hybrid hearing at the request of interested parties.⁷⁶ Experience with these hearings has shown that they have minimal impact on an agency's ability to issue rules in a timely fashion. Indeed, in what was perhaps the highest profile example—the ergonomics regulation proposed at the end of the Clinton administration—the agency published the proposal, held a hearing, and issued the final rule **within one year**, even though it was one of the most complicated and controversial regulations in the agency's history.⁷⁷

Hearings on the record are commonplace for other types of administrative proceedings, even relatively routine ones. The U.S. Department of Agriculture, Agricultural Marketing Service, for example, uses on the record hearings as part of the process of issuing milk pricing regulations. This type of hearing is particularly useful because it defines the facts that either support or call into question the proposed regulation. This type of hearing also focuses the relevant facts through truth testing, and it confines the facts upon which a rule may be issued to those within the hearing record. This process produces a hearing record that will be invaluable to a reviewing court.

VII. CONCLUSION

The goal of a regulatory agency should be to produce regulations that implement the intent of Congress in the most effective and efficient ways possible. Congress has provided significant guidance as to the analyses agencies must undertake to achieve Congressional intent. The analyses required by Congress are supposed to guide the agency to make decisions based on fact, sound science and economic reality.

Unfortunately, over the decades, the EPA has ignored the guidance given by Congress and Executive Order for developing rules in a cost-effective manner that achieve congressional intent. The result of such conduct is an agency that issues massive mandates that the states and

⁷⁵ In the case of major rules, a stakeholder could petition for the hearing, which the agency can deny.

⁷⁶ 29 U.S.C. § 655(b)(3). See also 29 C.F.R. §§ 1911.15-18. Other statutes require agencies to provide formal or "hybrid" rulemakings: 15 U.S.C. § 57a(c)(2)(B)(Federal Trade Commission); 21 U.S.C. § 371(e)(Food and Drug Administration); and 15 U.S.C. § 2603(b)(5)(EPA Toxic Substances Control Act).

⁷⁷ The controversial ergonomics rule is the only rule to be formally disapproved by Congress and the Executive under the Congressional Review Act. See S. J. Res. 5, which became Public Law 107-5 (Signed by President Bush on March 20, 2001).

the business community must implement regardless of cost. As such, EPA becomes the primary lawmaker on environmental issues, not Congress. This is a travesty and Congress must regain its role as the primary legislative body.

There is an even deeper harm however, inflicted by the EPA's failure to fully analyze the impact of its regulations. That harm is the deliberate avoidance of any attempt to understand real world impacts of regulations on people and the communities that will be adversely impacted by its actions. If the goal of every agency is to produce quality rules that implement the intent of Congress, why would an agency fail to evaluate job impacts, the cumulative impacts of regulations, develop regulations using peer reviewed studies, and use the best science and economics? The Regulatory Accountability Act of 2015 would bring the Administrative Procedure Act of 1946 into the modern era. The Regulatory Accountability Act passed the House of Representatives on January 13, 2015 by a bipartisan vote of 250-175.⁷⁸ The Senate has the opportunity to make this reform a reality and should take up and pass S. 2006 as soon as possible.

Thank you for allowing me to testify today and I look forward to answering your questions.

⁷⁸ The House passed previous versions of Regulatory Accountability Act in 2011 and 2013. H.R. 3010, the Regulatory Accountability Act of 2011, passed the House on a bipartisan 253-157 vote on December 2, 2011. H.R. 2122, the Regulatory Accountability Act of 2013, passed the House as part of H.R. 2804, the ALERRT Act, on a bipartisan vote of 236-179 on February 27, 2014. The Senate versions of those bills, S. 1606 and S.1029, were not acted upon.

Implementation of Federal Environmental Programs	
States	96.5
Federal and Other	3.5

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Reducing Risk: Setting Priorities And Strategies For Environmental Protection

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This particular project was conducted at the request of the EPA Administrator and addresses a broader range of issues and concerns than most SAB reports. Consequently, many of the findings and recommendations in this report have more of a policy orientation than is usually the case.

Cover Photo by Steve Delaney

REDUCING RISK: SETTING PRIORITIES AND STRATEGIES FOR ENVIRONMENTAL PROTECTION

The Report of The Science Advisory Board:
Relative Risk Reduction Strategies Committee

to

William K. Reilly
Administrator
United States Environmental Protection Agency

September 1990

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U.S. Environmental Protection Agency
Washington, DC 20460
September 25, 1990

Mr. William K. Reilly
Administrator
U.S. Environmental Protection Agency
Washington, DC 20640

Dear Mr. Reilly:

Over a year and a half ago, you asked the Science Advisory Board to review EPA's 1987 report, *Unfinished Business: A Comparative Assessment of Environmental Problems*, and then assess and compare different environmental risks in light of the most recent scientific data. You also asked us to examine strategies for reducing major risks and to recommend improved methodologies for assessing and comparing risks and risk reduction options in the future. This report and its three appendices have been prepared in response to your request.

To undertake this project, the Science Advisory Board created a special Relative Risk Reduction Strategies Committee composed of 39 distinguished scientists and other experts from academia, state government, industry, and public interest groups. The Committee carefully considered the reports written by each of its three Subcommittees, and the findings and recommendations contained in *Reducing Risk* flow from the work of the Subcommittees and reflect study, discussion, and synthesis by the Committee as a whole. This report has been reviewed by the SAB Executive Committee and has been formally approved as an SAB document.

As you are aware, the Science Advisory Board normally reviews scientific reports for the Agency and evaluates them on the basis of scientific and engineering data. However, in this case our review of *Unfinished Business* and our analysis of risk reduction options have led us to make findings and recommendations that are more policy-oriented than is usually the case. We have done this at your request.

This report, together with its three appendices, suggests steps that the Environmental Protection Agency should take to improve its own efforts — and to involve Congress and the rest of the country in a collective effort — to reduce environmental risk. We strongly believe that the Agency should take steps to ensure that this nation uses all the tools at its disposal in an integrated, targeted approach to protecting human health, welfare, and the ecosystem.

This report is only a step along a long road. We encourage you to lead the Agency in taking the necessary further steps as soon as possible.

Sincerely,

Raymond Loehr
Chair, Science Advisory
Board, and Co-Chair, Relative
Risk Reduction Strategies
Committee

Jonathan Lash
Co-Chair, Relative Risk
Reduction Strategies Committee

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Chapter One—Executive Summary

The Concept of Risk

Over the past 20 years this country has put in place extensive and detailed government policies to control a number of environmental problems. Smog in heavily populated areas, the eutrophication of lakes, elevated levels of lead in the blood of millions of children, the threat of cancer from exposure to pesticide residues in food, and abandoned drums of hazardous wastes are a few of the problems that have driven the enactment of more than a dozen major Federal laws and the current public and private expenditure of about \$100 billion a year to protect the environment.

Those efforts have led to very real national benefits. The staggering human health and ecological problems apparent throughout eastern Europe suggest the price this country would be paying now had it not invested heavily in pollution controls.

Yet despite the demonstrable success of past national efforts to protect the environment, many national environmental goals still have not been attained. Factors like the growth in automobile use and common agricultural practices have caused national efforts to protect the environment to be less effective than intended.

Furthermore, with hindsight it is clear that in many cases those efforts have been inconsistent, uncoordinated, and thus less effective than they could have been. The fragmentary nature of U.S. environmental policy has been evident in three ways:

- *In Laws.* As different environmental problems were identified, usually because the adverse effects — smog in major cities, lack of aquatic life in stream segments, declining numbers of bald eagles — were readily apparent, new laws were passed to address each new problem. However, the tactics and goals of the different laws were neither consistent nor coordinated, even if the pollutants to be controlled were the same. Many laws not passed primarily for environmental purposes also had major effects on the environment.

- *In Programs.* The Environmental Protection Agency (EPA) was established as the primary Federal agency responsible for implementing the nation's environmental laws. EPA then evolved an administrative structure wherein each program was primarily responsible for implementing specific laws. Consequently, the efforts of the different programs

rarely were coordinated, even if they were attempting to control different aspects of the same environmental problem. This problem is compounded by the fact that EPA is not the only agency whose activities affect the environment.

- *In Tools.* The primary tools used to protect the environment have been controls designed to capture pollutants before they escape from smokestacks, tailpipes, or sewer outfalls, and technologies designed to clean up or destroy pollutants after they have been discharged into the environment. These so-called "end-of-pipe" controls and remediation technologies almost always have been applied because of Federal, State, or local legal requirements.

For a number of reasons, this kind of fragmented approach to protecting the environment will not be as successful in the future as it has been in the past. In this country the most obvious controls already have been applied to the most obvious problems. Yet complex and less obvious environmental problems remain, and the aggregate cost of controlling those problems one-by-one is rising.

Moreover, this country — and the rest of the world — are facing emerging environmental problems of unprecedented scope. Population growth and industrial expansion worldwide are straining global ecosystems. Never before in history have human activities threatened to change atmospheric chemistry to such an extent that global climate patterns were altered.

Given the diversity, complexity, and scope of the environmental problems of concern today, it is critically important that U.S. environmental policy evolves in several fundamental ways. Essentially, national policy affecting the environment must become more integrated and more focused on opportunities for environmental improvement than it has been in the past.

The environment is an interrelated whole, and society's environmental protection efforts should be integrated as well. Integration in this case means that government agencies should assess the range of environmental problems of concern and then target protective efforts at the problems that seem to be the most serious. It means that society should use all the tools — regulatory and non-regulatory alike — that are available to protect the environment. It means that controlling the end of the pipe where pollutants enter the environment, or remediating problems caused by pollutants after they have entered the environment, is not sufficient. Rather,

waste-generating activities have to be modified to minimize the waste or to prevent the waste from being generated at all. Most of all, integration is critically important because significant sources of environmental degradation are embedded in typical day-to-day personal and professional activities, the cumulative effects of which can become serious problems. Thus protecting the environment effectively in the future will require a more broadly conceived strategic approach, one that involves the cooperative efforts of all segments of society.

One tool that can help foster the evolution of an integrated and targeted national environmental policy is the concept of environmental risk. Each environmental problem poses some possibility of harm to human health, the ecology, the economic system, or the quality of human life. That is, each problem poses some environmental risk. Risk assessment is the process by which the form, dimension, and characteristics of that risk are estimated, and risk management is the process by which the risk is reduced.

The concept of environmental risk, together with its related terminology and analytical methodologies, helps people discuss disparate environmental problems with a common language. It allows many environmental problems to be measured and compared in common terms, and it allows different risk reduction options to be evaluated from a common basis. Thus the concept of environmental risk can help the nation develop environmental policies in a consistent and systematic way.

Scientists have made some progress in developing quantitative measures for use in comparing different risks to human health. Given sufficient data, such comparisons are now possible within limits. Although current ability to assess and quantify ecological risks is not as well developed, an increased capacity for comparing different kinds of risks more systematically would help determine which problems are most serious and deserving of the most urgent attention. That capacity would be even more valuable as the number and seriousness of environmental problems competing for attention and resources increase.

An improved ability to compare risks in common terms would have another value as well: it would help society choose more wisely among the range of policy options available for reducing risks. There are a number of ways to reduce the automobile emissions that contribute to urban smog; there are a number of ways to decrease human exposure to lead. The evaluation of relative risks can help identify the relative efficiency and effectiveness of different risk reduction options.

There are heavy costs involved if society fails to set environmental priorities based on risk. If finite resources are expended on lower-priority problems at the expense of higher-priority risks, then society will face needlessly high risks. If priorities are established based on the greatest opportunities to reduce risk, total risk will be reduced in a more efficient way, lessening threats to both public health and local and global ecosystems.

The Traditional Role of the Environmental Protection Agency

For the past 20 years, EPA has been basically a "reactive" agency. As environmental problems were identified, the public conveyed its concern to Congress, and Congress passed laws to try to solve the problems within some, often well-defined, timeframe. EPA then implemented the laws using the resources — budget and staff — allocated by Congress.

Consequently, EPA has seen its mission largely as managing the reduction of pollution and, in particular, only that pollution that is defined in the laws that it administers. EPA's internal programmatic structure mirrors the environmental legislation that it is required to implement. Moreover, the tools EPA traditionally has used to reduce pollution have been limited, in general, to the emissions controls it could force polluters to apply through regulatory action.

This reactive mode, although understandable when seen in its historical context, has limited the efficiency and effectiveness of EPA's environmental

protection efforts. Because of EPA's tendency to react to environmental problems defined in specific environmental laws, the Agency has made little effort to compare the relative seriousness of different problems. Moreover, the Agency has made very little effort to anticipate environmental problems or to take preemptive actions that reduce the likelihood of an environmental problem occurring.

Because most of EPA's program offices have been responsible for implementing specific laws, they have tended to view environmental problems separately; each program office has been concerned primarily with those problems that it has been mandated to remediate, and questions of relative seriousness or urgency generally have remained unasked. Consequently, at EPA there has been little correlation between the relative resources dedicated to different environmental problems and the relative risks posed by those problems.

Unfinished Business

The Environmental Protection Agency squarely faced the question of relative risk for the first time when it established an Agency task force to assess and compare the risks associated with a range of environmental problems. In 1986 and 1987, about 75 senior career managers and staff compared the relative risks posed by 31 environmental problems within four broad categories of risk: 1) human cancer risk, 2) human non-cancer health risk, 3) ecological risk, and 4) welfare risk. The task force limited its comparison to those risks that remain after currently-required controls have been applied (i.e., residual risks). The results of this effort were presented in *Unfinished Business: A Comparative Assessment of Environmental Problems*.

Unfinished Business was a landmark study. For the first time, the many environmental problems of concern to EPA were compared to each other in a non-programmatic context. Moreover, the report explicitly pointed out the disparity between residual risk and resource allocation at EPA. The problems that the authors judged to pose the most serious

risks were not necessarily the problems that Congress and EPA had targeted for the most aggressive action.

However, the report did find a correlation between EPA's programmatic priorities and the apparent public perceptions of risk. That is, Congress and the Agency were paying the most attention to environmental problems that the general public believed posed the greatest risks.

The authors of *Unfinished Business* recognized that their risk rankings, while based on the judgments of experienced professionals, were limited, since they were based on incomplete data and novel risk comparison techniques. But the value of the report, then and now, rests not so much on the accuracy of the rankings but on the fact that EPA had begun to see the long-term public policy importance of understanding relative risks. In short, *Unfinished Business* was yet another sign that the nation as a whole, and EPA in particular, could not continue "business-as-usual" in the face of the environmental risks of the 1990s and beyond.

The Relative Risk Reduction Strategies Committee

Shortly after he took office early in 1989, EPA Administrator William K. Reilly asked the Science Advisory Board (SAB) to review EPA's 1987 report on relative environmental risk, *Unfinished Business*, evaluate its findings, and develop strategic options for reducing risk. In response to that request, the SAB formed a special committee, the Relative Risk Reduction Strategies Committee (RRRSC), which in turn was divided into three Subcommittees: the Ecology and Welfare Subcommittee, the Human Health Subcommittee, and the Strategic Options Subcommittee.

The Relative Risk Reduction Strategies Committee was co-chaired by Dr. Raymond C. Loehr, chairman of the SAB and professor at the University of Texas, and Mr. Jonathan Lash, Secretary of the State of Vermont's Agency of Natural Resources. The Ecology and Welfare Subcommittee was chaired by Dr. William Cooper of Michigan State University; the Human Health Subcommittee was chaired by Dr. Arthur Upton of the Institute of Environmental Medicine, New York University Medical Center; and the Strategic Options Subcommittee was chaired by Mr. Alvin Alm of Science Applications International Corporation.

The 39 members of the RRRSC and its Subcommittees were nationally-recognized scientists, engineers, and managers with broad experience in addressing environmental and health issues. Their names and professional affiliations are listed at the front of this overview report.

Through its combined efforts the RRRSC attempted to achieve four objectives:

1. Critically review *Unfinished Business*, reflecting any significant new information that bears on the evaluation of risks associated with specific environmental problems.
2. To the extent possible, merge the evaluations of 1) cancer and non-cancer risks and 2) ecological and welfare risks.
3. Provide optional strategies for reducing the major environmental risks.

4. Develop a long-term strategy for improving the methodology for assessing and ranking environmental risks and for assessing the alternative strategies that can reduce risks.

In particular, the Ecology and Welfare Subcommittee and the Human Health Subcommittee were charged with reviewing and updating the risk findings from *Unfinished Business*. Those two Subcommittees were to provide, to the extent possible, a single aggregate ranking of the risks that each Subcommittee assessed, and recommend a long-term strategy for improving the methodology for assessing such risks. The Strategic Options Subcommittee was charged with 1) identifying strategy options for reducing residual environmental risks, and 2) developing and demonstrating analytical methodologies for identifying and selecting risk reduction options.

The RRRSC began planning its work in the spring of 1989, and it held its first meeting in September 1989. In all, the Committee and its three Subcommittees held twelve public meetings and three working sessions.

The RRRSC has conducted a lengthy review of the data and methodologies that support risk assessment, comparison, and reduction today. This review of environmental risk has led to several conclusions about the need for and value of comparative risk assessments and their implications for the national environmental agenda.

This overview report highlights the most important findings and recommendations from the three Subcommittee reports, along with insights derived from discussions among the Committee members after they reviewed the Subcommittee reports. The full reports of the three Subcommittees are included as appendices to this report (see inside back cover) and should be referred to for important additional information and detailed support for the contents of this overview report.

The RRRSC recognizes that this overview report and its appendices contain policy-oriented findings and recommendations that are outside the normal scope of SAB purview. But in this case the EPA Administrator explicitly asked the SAB to review, from a technical and scientific perspective, the optional strategies available for reducing risk. Thus this report includes recommendations on approaches to risk management and on the future direction of national environmental policy. However, nothing in this report or its appendices should be construed as an SAB recommendation for a specific policy option to be used to reduce a specific environmental risk.

The Ten Recommendations

1. EPA should target its environmental protection efforts on the basis of opportunities for the greatest risk reduction. Since this country already has taken the most obvious actions to address the most obvious environmental problems, EPA needs to set priorities for future actions so the Agency takes advantage of the best opportunities for reducing the most serious remaining risks.

2. EPA should attach as much importance to reducing ecological risk as it does to reducing human health risk. Because productive natural ecosystems are essential to human health and to sustainable, long-term economic growth, and because they are intrinsically valuable in their own right, EPA should be as concerned about protecting ecosystems as it is about protecting human health.

3. EPA should improve the data and analytical methodologies that support the assessment, comparison, and reduction of different environmental risks. Although setting priorities for national environmental protection efforts always will involve subjective judgments and uncertainty, EPA should work continually to improve the scientific data and analytical methodologies that underpin those judgments and help reduce their uncertainty.

4. EPA should reflect risk-based priorities in its strategic planning processes. The Agency's long-range plans should be driven not so much by past risk reduction efforts or by existing programmatic structures, but by ongoing assessments of remaining environmental risks, the explicit comparison of those risks, and the analysis of opportunities available for reducing risks.

5. EPA should reflect risk-based priorities in its budget process. Although EPA's budget priorities are determined to a large extent by the different environmental laws that the Agency implements, it should use whatever discretion it has to focus budget resources at those environmental problems that pose the most serious risks.

6. EPA — and the nation as a whole — should make greater use of all the tools available to reduce risk. Although the nation has had substantial success in reducing environmental risks through the use of government-mandated end-of-pipe controls, the extent and complexity of future risks will necessitate the use of a much broader array of tools, including market incentives and information.

7. EPA should emphasize pollution prevention as the preferred option for reducing risk. By encouraging actions that prevent pollution from being generated in the first place, EPA will help reduce the costs, intermedia transfers of pollution, and residual risks so often associated with end-of-pipe controls.

8. EPA should increase its efforts to integrate environmental considerations into broader aspects of public policy in as fundamental a manner as are economic concerns. Other Federal agencies often affect the quality of the environment, e.g., through the implementation of tax, energy, agricultural, and international policy, and EPA should work to ensure that environmental considerations are integrated, where appropriate, into the policy deliberations of such agencies.

9. EPA should work to improve public understanding of environmental risks and train a professional workforce to help reduce them. The improved environmental literacy of the general public, together with an expanded and better-trained technical workforce, will be essential to the nation's success at reducing environmental risks in the future.

10. EPA should develop improved analytical methods to value natural resources and to account for long-term environmental effects in its economic analyses. Because traditional methods of economic analysis tend to undervalue ecological resources and fail to treat adequately questions of intergenerational equity, EPA should develop and implement innovative approaches to economic analysis that will address these shortcomings.

Chapter Two—Findings

1. The Importance of *Unfinished Business*

H-3.0; H-6.0
E-3.0; E-5.0
S-4.2

With the publication of *Unfinished Business* early in 1987, EPA took a bold and much-needed step: it compared the relative residual risks posed by a range of different environmental problems, and thus suggested an important shift in national environmental policy. With that report EPA took the first step toward relative risk reduction; that is, a policy that attempts to match Agency and societal resources to risk.

To produce *Unfinished Business* EPA brought together staff from all its program offices for the explicit purpose of comparing the relative risks of different environmental problems, regardless of individual programmatic priorities or responsibilities. To do that, the EPA staff had to assess environmental risk in a context broader than programmatic structure or legislated activities. In short, they had to put aside considerations of bureaucratic “turf” in order to rank the problems they believed most needed society’s attention. EPA should be applauded for the courage and foresight to undertake a project like *Unfinished Business*.

Unfinished Business presents useful, preliminary information for comparing environmental problems, although in some cases its rankings are a matter of judgment and cannot be supported fully by existing data. The Ecology and Welfare Subcommittee questioned the welfare rankings, because it disagreed with some of the economic assumptions underlying those rankings and because of a general lack of relevant economic data. The Human Health Subcommittee questioned the accuracy of any ranking of human health risks at this time, given the limited human exposure and chronic toxicity data

currently available. Both Subcommittees observed that the 31 problems assessed were not derived from a systematic classification of all environmental problems, and both suggested alternative and more comprehensive approaches to classification that would facilitate a more coherent ranking.

Most of the 31 environmental problems assessed in *Unfinished Business* are so broad, and include so many toxic and non-toxic agents, that its ranking of problems cannot be evaluated with rigor or confidence. Additionally, the authors of *Unfinished Business* intentionally defined environmental problems to correspond to legislation and programmatic organization. As a result, they attempted to compare heterogeneous mixtures of pollutants (like air pollutants and drinking water pollutants) to pollutant sources (like oil spills and mining waste) to receptors (like consumers and workers). Yet without a consistent basis for comparison, such comparisons are tenuous at best.

Moreover, because the authors chose to limit the environmental problems they compared, *Unfinished Business* does not address problems like the loss of habitat and the decline in genetic diversity, even though such problems pose very serious risks, and EPA and other agencies may be able to take actions to mitigate them. A meaningful ranking of relative environmental risks must include all such risks, whether or not laws have been passed or programs set up to control them.

A final shortcoming for the authors of *Unfinished Business* was the availability of data. Good data to evaluate risks simply did not — and in many cases still do not — exist. The EPA staff understandably used their professional judgment to fill the data gaps. The Subcommittee reports appended to this overview report document in more detail the members’ judgments as to the relative strength and weakness of the data used to support the risk rankings in *Unfinished Business*.

The findings and recommendations described in this overview report have been derived mainly from the reports prepared by the three Subcommittees of the Relative Risk Reduction Strategies Committee. Those reports, which are included as appendices to this report, contain detailed information that support and more fully explain the findings and recommendations. Such information can be found by referring to the sections of the different appendices that are listed at the beginning of each finding and recommendation. In the listed crossreferences:

- “E” refers to the Report of the Ecology and Welfare Subcommittee;
- “H” refers to the Report of the Human Health Subcommittee; and
- “S” refers to the Report of the Strategic Options Subcommittee.

2. Problems in Ranking Risks

E-3.0; E-5.2
H-3.0; H-6.0

As long as there are large gaps in key data sets, efforts to evaluate risk on a consistent, rigorous basis or to define optimum risk reduction strategies necessarily will be incomplete, and the results will be uncertain. For example, data on human exposure and on the toxicity of many pollutants are seriously deficient. In particular, the lack of pertinent exposure data makes it extremely difficult to assess human health risks.

Moreover, great uncertainty often is associated with the data that do exist. Exposure and toxic response models, the numbers used to quantify risks, and variations in individual susceptibility to risks are often highly uncertain. Without more and better data, conclusions about relative risk will be tenuous and will depend in large measure on professional judgment.

In addition to the lack of data, methodological inadequacies also impede the assessment and comparison of risk. At this time EPA does not have an effective, consistent way of identifying environmental problems in a manner that neither fragments nor aggregates sources of risk to an extent that renders comparisons untenable. EPA's current framework of statutory mandates and program structure helps to maintain artificial distinctions among environmental problems, and those distinctions are conducive neither to sound evaluation of relative risk nor to selection of the most effective actions to reduce risk.

In particular, the methodologies currently used to estimate the benefits of risk reduction activities are inadequate and inappropriate. For example, a methodology that presumes the future value of an ecological resource necessarily must be less than its

present value will not be a useful analytical tool for sustaining economic development over the long term. The standard practice of discounting future resource values is inappropriate, and it results in policies that lead to the depletion of irreplaceable natural resources.

Reliance on "willingness to pay" and similar techniques commonly used in economic analyses has distorted current understanding of the value of natural resources. While some people may not care about wetlands and assign no value to their existence, such areas still provide valuable ecosystem services to this and future generations. While few people are likely to care about and be willing to pay for plankton and fungi, such organisms play a critical role in sustaining economically valuable ecosystems.

An additional difficulty entailed in any attempt to compare and rank environmental risks is the inevitable value judgments that must be made. For example, are health risks posed to the aged more or less serious than health risks posed to infants? Are risks of cancer more or less serious than threats to reproductive processes? Comparing the risks posed to human populations with the risks posed to ecosystems may be even more difficult. It seems clear that subjective values always will — and should — influence the ranking of relative environmental risks, no matter how sophisticated the technical and analytical tools become.

3. The Extraordinary Value of Natural Ecosystems

E-5.2

Natural ecosystems like forests, wetlands, and oceans are extraordinarily valuable. Those ecosystems contain economically valuable natural resources that feed, clothe, and house the human race. They act as sinks that, to a certain extent, absorb and neutralize the pollutants generated by human activity. Although natural ecosystems — and the linkages among them — are not completely understood, there is no doubt that over time the quality of human life declines as the quality of natural ecosystems declines.

The value of natural ecosystems is not limited to their immediate utility to humans. They have an intrinsic, moral value that must be measured in its own terms and protected for its own sake.

However, over the past 20 years and especially over the past decade, EPA has paid too little attention to natural ecosystems. The Agency has considered the protection of public health to be its primary mission, and it has been less concerned about risks posed to ecosystems. The Agency's relative lack of concern reflects society's views as expressed in environmental legislation; ecological degradation probably is seen as a less serious problem because it is often subtle, long-term, and cumulative. But for whatever reason, this imbalance is a manifest, if inadvertent, part of current national environmental policy.

EPA's response to human health risks as compared to ecological risks is inappropriate, because, in the real world, there is little distinction between the two. Over the long term, ecological degradation either directly or indirectly degrades human health and the economy. For example, as the extent and quality of saltwater estuaries decline, both human health and local economies can suffer. As soils erode, forests, farmlands, and waterways can become less productive. And while the loss of species may not be noticed immediately, over time the decline in genetic diversity has implications for the future health of the human race.

In short, human health and welfare ultimately rely upon the life support systems and natural resources provided by healthy ecosystems. Moreover, human beings are part of an interconnected and interdependent global ecosystem, and past experience has shown that change in one part of the system often affects other parts in unexpected ways. National efforts to evaluate relative environmental risks should recognize the vital links between human life and natural ecosystems. Up to this point, they have not.

4. Time, Space, and Risk

E-4.3; E-7.0
S-2.2

While the data needed to support firm rankings of risk were found to be limited, the RRRSC identified a number of important factors that must be considered in any assessment or ranking of the risk associated with a particular environmental problem. Those factors include the number of people and other organisms exposed to the risk, the likelihood of the environmental problem actually occurring among those exposed, and the severity of the effects, including the economic losses and other damages involved, if it does occur.

In addition, two other aspects of potential environmental problems — i.e., their temporal and spatial dimensions — also must be given considerable weight in any analysis of relative environmental risk. Consideration of time and space can help guide judgments about relative risks in the absence of complete data.

The temporal dimension of an environmental problem is the length of time over which the problem is caused, recognized, and mitigated. For some environmental problems the temporal dimension can be very long. For example, the chronic human health effects of air or water pollution may become apparent only after many years of exposure. It may take decades of human activity to begin to change the global climate, and more decades may pass before the effects of human activity on the global climate are clearly understood. Some pollutants can persist in the environment — and thus pose environmental risks — indefinitely. And it may take decades or even centuries before depleted species of wildlife recover from the loss of habitat, if recovery is possible at all.

The spatial dimension of an environmental problem is the extent of the geographical area that is affected by it. Some environmental problems, like elevated levels of radon, may be limited to the basements of some homes, while problems like stratospheric ozone depletion can affect the entire globe. And some global problems, like the loss of genetic diversity, can be caused by human activities in relatively limited geographical areas.

The time and space dimensions of environmental problems should weigh heavily in any comparison of relative environmental risks. For example, if long-lived pollutants like DDT and PCBs can become concentrated in the food chain and pose a threat to future as well as present human and ecological health, those future risks should be taken into account when relative risks are compared. Similarly, if global climate change or stratospheric ozone depletion has the potential to affect the health and/or economic well-being of virtually everyone on earth, now and in the future, the extent and duration of the risk should suggest a relatively high-risk ranking.

Ecosystems are generally resilient to short-term insults. For example, oil spills and water pollution usually cause only temporary ecological changes; nature has a substantial capacity for healing itself. However, some changes are either permanent or semipermanent. Destroying wetlands, altering natural water flows (as in the Everglades), global warming, and stratospheric ozone depletion can cause irreversible and, in some cases, widespread problems.

In fact, some long-term and widespread environmental problems should be considered relatively high-risk even if the data on which the risk assessment is based are somewhat incomplete and uncertain. Some risks are potentially so serious, and the time for recovery so long, that risk reduction actions should be viewed as a kind of insurance premium and initiated in the face of incomplete and uncertain data. The risks entailed in postponing action can be greater than the risks entailed in taking inefficient or unnecessary action. Moreover, preemptive actions are especially justifiable if — like the energy conservation efforts that would slow the accumulation of greenhouse gases — they lead to unrelated but immediate and substantial benefits, such as improved ambient air quality and reduced U.S. dependence on imported oil.

5. The Links Between Risk and Choice

S-2.2

It is sometimes tempting to think simplistically about the sources of environmental risk as being a particular industry, a particular product, or a particular pollutant. Conceptually, smokestacks can be controlled, products modified, and pollutants banned with relative ease.

But the sources of environmental risk are much more diverse and complicated than that. In fact, the sources of risk often are to be found in the day-to-day choices made by individuals, communities, and businesses. And many kinds of environmental risk will not be reduced substantially, especially over the long term, if past patterns of individual, community, and business choices do not change in light of the relative risks posed by those choices.

In a sense, the very existence of the human race inevitably poses some level of environmental risk. People necessarily generate wastes, both as individuals and through aggregate economic activities. People necessarily destroy or infringe upon some natural habitats when they construct their own. Individuals either increase or lessen environmental risk depending on which consumer products they buy, how they design their homes, and whether they walk or drive to work. Society affects environmental risk at the local level through building codes and zoning laws and at the national level through tax, energy, and agricultural policies.

But all these activities involve choice, and the environmental risks posed by many human activities can be reduced sharply if different choices are made. So one of the most important questions facing society is how to influence and shape individual, community, and business choices so that environmental risks are reduced.

Choice is influenced by a number of factors, including education and ethics. Some people may choose to purchase certain consumer products because of a genuine concern about the environmental effects of their personal buying patterns. Similarly, some businesses may redesign production processes to eliminate pollution because of a desire to be perceived as corporate "good citizens."

Economic incentives are also important tools for inducing particular kinds of choices. When the price of energy rises, consumers are likely to buy more fuel-efficient vehicles and weatherize their homes, while plant managers have an added incentive to purchase more energy-efficient equipment. Full pricing of municipal services can give people an incentive to recycle their household wastes and conserve water.

Laws and regulations, of course, are very effective at shaping individual and social choices. Local zoning laws can change the pattern of economic development in a community and limit where homes can be built. Local, State, and Federal procurement regulations can have a substantial effect on the development of markets for recycled products.

Projected future growth in population and economic activity could add enormously to the environmental risks faced in this country and around the world. But growth and reductions in environmental risk are not necessarily incompatible, if past patterns of individual, community, and business choice can change. In national efforts to assess, compare, and control relative risks, the importance of those choices — and the policy options available to influence those choices — should not be overlooked.

6. Public Perceptions of Risk

S-B.4

Public opinion polls taken over the past several years confirm that people are more worried about environmental problems now than they were 20 years ago when the first wave of environmental concern led to major changes in national policy. But the areas of greatest concern to the public today are not necessarily those problems identified in *Unfinished Business*. In other words, the remaining and emerging environmental risks considered most serious by the general public today are different from those considered most serious by the technical professionals charged with reducing environmental risk.

This dichotomy between public perceptions and professional understanding of environmental risk presents an enormous challenge to a pluralistic, democratic country. A Federal agency like EPA must be sensitive to public concerns about environmental problems. In fact, since public concerns tend to drive national legislation, Federal environmental laws are more reflective of public perceptions of risk than of scientific understanding of risk. Consequently, EPA's budget and staff resources tend to be directed at those environmental problems perceived to be most serious by the general public.

Yet if national resources are to be used most effectively to promote environmental quality, then such resources must be aimed at those environmental problems that pose the greatest risks.

The ability to match resources to risks will measure the success of national policies to protect the environment.

One obvious way to bridge this dichotomy would be to improve the public's understanding of the scientific and technical aspects of environmental risk while improving scientists' understanding of the basis of public concern. Public perceptions of environmental risk tend to incorporate deeply-held subjective values, like justice and equity, that, although difficult to quantify, reflect important elements of the quality of life that government is bound to protect. Moreover, since the scientific understanding of any environmental problem is likely to evolve as the science improves, and since environmental policy necessarily embodies subjective values, scientific understanding should not be the sole determinant of environmental policy.

Therefore, EPA must be prepared to listen carefully to the public's perceptions of risk. Moreover, EPA should balance those perceptions with current scientific understanding as the Agency develops long-term risk reduction strategies.

7. Relatively High-Risk Environmental Problems

E-4.0; E-6.0;
H-5.0; H-7.0

The RRRSC not only reviewed the risk rankings contained in *Unfinished Business*, but it also identified several environmental problems as relatively high-risk, based on available scientific data and technical understanding. This effort was challenging for a number of reasons. Ecological, health, and welfare risks can be manifested in a number of different endpoints; it is difficult to compare risks with widely different time scales and spatial dimensions; because of data gaps and methodological inadequacies, it is rarely feasible to quantify total risk. In other words, the RRRSC faced many of the

same hurdles that faced the authors of *Unfinished Business* when they developed their risk rankings.

Consequently, the RRRSC did not rank risks in the same manner as *Unfinished Business* did. The Ecology and Welfare Subcommittee grouped environmental problems into high-, medium-, and low-risk areas; the Human Health Subcommittee identified environmental problem areas where existing data indicated that risks could be relatively high. Additional data might identify additional high-risk problems. Both Subcommittees developed their assessments in light of the latest scientific and technical knowledge and using their best professional judgment, and both caution that their assessments are based on incomplete and often inadequate knowledge about 1) the extent of human and ecological exposures to pollutants and 2) exposure-response relationships.

Risks To The Natural Ecology And Human Welfare

The Ecology and Welfare Subcommittee identified areas of relatively high, medium, and low risk, despite gaps in the relevant data. The four environmental problems that it considered to be relatively high-risk are likely to be considered high-risk even after data and analytical methodologies are improved, because the geographic scale of all four is very large (regional to global), and because the time that could be required to mitigate all four is very long, and some effects are irreversible.

The Ecology and Welfare Subcommittee did not limit their assessment to the environmental problems listed in *Unfinished Business*. The order of problems listed within each of the three different risk groups shown below is not meant to imply a ranking.

Relatively High-Risk Problems

- Habitat Alteration and Destruction

Humans are altering and destroying natural habitats in many places worldwide, e.g., by the draining and degradation of wetlands, soil erosion, and the deforestation of tropical and temperate rain forests.

- Species Extinction and Overall Loss of Biological Diversity

Many human activities are causing species extinction and depletion and the overall loss of biological diversity, including the genetic diversity of surviving species.

- Stratospheric Ozone Depletion

Because releases of chlorofluorocarbons and other ozone-depleting gases are thinning the earth's stratospheric ozone layer, more ultraviolet radiation is reaching the earth's surface, thus stressing many kinds of organisms.

- Global Climate Change

Emissions of carbon dioxide, methane, and other greenhouse gases are altering the chemistry of the atmosphere, threatening to change the global climate.

Relatively Medium-Risk Problems

- Herbicides/Pesticides

- Toxics, Nutrients, Biochemical Oxygen Demand, and Turbidity in Surface Waters

- Acid Deposition

- Airborne Toxics

Relatively Low-Risk Problems

- Oil Spills

- Groundwater Pollution

- Radionuclides

- Acid Runoff to Surface Waters

- Thermal Pollution

Risks To Human Health

The Human Health Subcommittee limited its assessment to those problems addressed by *Unfinished Business*. On reviewing the rankings in *Unfinished Business*, the Subcommittee identified those problems that represented major types of human exposure known to be associated with significant impacts on human health. In four such instances, relatively high-risk rankings were supported more firmly by the available data than they were for other health problems. The Subcommittee also noted that the development of better methodologies and more complete data could lead to a different approach to the assessment of human health risks, and that such an approach would involve the selection of specific environmental toxicants that warranted detailed assessment and major risk reduction efforts.

- **Ambient Air Pollutants**

Stationary and mobile sources emit a range of different air pollutants to which large populations are exposed. Some have toxic and/or carcinogenic effects following direct inhalation exposure (e.g., carbon monoxide and benzene). Others, such as lead and arsenic, reach humans by a variety of pathways including direct inhalation, inhalation of resuspended dust, and ingestion of dust deposited on food products. Still others are important precursors that can lead to compounds such as ozone, acid aerosols, and carcinogenic hydrocarbons that form in the atmosphere over large areas of North America.

- **Worker Exposure to Chemicals in Industry and Agriculture**

Industrial and agricultural workers are exposed to many toxic substances in the workplace. Such

exposures can cause cancer and a wide range of non-cancer health effects. Due to the large population of workers directly exposed to a range of highly toxic chemicals, this problem poses relatively high human health risks.

- **Pollution Indoors**

Building occupants may be exposed to radon and its decay products as well as to many airborne combustion products, including nitrogen dioxide and environmental tobacco smoke. Indoor exposures to toxic agents in consumer products (e.g., solvents, pesticides, formaldehyde) also can cause cancer and a range of non-cancer health effects. Due to the large population directly exposed to a number of agents, some of which are highly toxic, this problem poses relatively high human health risks.

- **Pollutants in Drinking Water**

Drinking water, as delivered at the tap, may contain agents such as lead, chloroform, and disease-causing microorganisms. Exposures to such pollutants in drinking water can cause cancer and a range of non-cancer health effects. This problem poses relatively high human health risks, because large populations are exposed directly to various agents, some of which are highly toxic.

Other problem areas also involve potentially significant exposure of large populations to toxic chemicals; e.g., pesticide residues on food and toxic chemicals in consumer products. However, the data bases to support those concerns are not as robust as they are for the four areas listed above.

8. Strategy Options for Reducing Environmental Risk

S-4.4

In addition to reviewing the findings of *Unfinished Business*, the RRRSC also reviewed a broad spectrum of policy options available for reducing major environmental risks. The Strategic Options Subcommittee examined a series of environmental problems and identified a range of risk reduction options for each of them. Thirteen problems were included in the analysis, nine of which had been ranked high in *Unfinished Business*.

The Subcommittee identified six generic risk reduction tools that should be considered for any problem area (see box on the following page), and generated 60 specific examples of options that could be applied to 13 environmental problems. The Subcommittee also developed a series of criteria that can be used to select from among the various risk reduction options available. These criteria include the magnitude of risk reduction to be achieved, the likelihood of achieving that risk reduction, the costs involved, the ease and speed of implementation and enforcement, the degree of intermedia transfer of risk, and overall cost-effectiveness.

Optional Tools For Reducing Environmental Risk

• Scientific and Technical Measures

Two major sets of scientific and technical measures are: 1) research and development to improve understanding of problems and point to promising solutions; and 2) innovations in pollution prevention approaches and pollution control technology. Examples include additional research to understand the potential for global warming and development of ecologically protective, cost-effective technologies to manage contaminated sediments.

• Provision of Information

In many cases risk reduction can be promoted by providing information to producers, consumers, and/or State and local governments. For example, new home buyers could be provided with the results of radon tests, and state and local governments could be provided with technical information to help them address indoor air pollution.

• Market Incentives

A key to reducing environmental risk is to ensure that consumers and producers face the full costs of their decisions. Economic incentive systems often can help accomplish this end. The major categories of incentive systems include: 1) pollution charges, 2) marketable permits, 3) deposit-refund systems, 4) removal of market barriers, and 5) revision of legal standards of liability. Examples include using marketable permits to lower costs and spur innovation in reducing acid rain,

and creating deposit-refund systems for tires and batteries.

• Conventional Regulations

Conventional regulations include performance standards, design standards, use restrictions, and product specifications. For example, the Agency could tighten restrictions on some uses of pesticides and develop new standards for automobile emissions.

• Enforcement

In many cases substantial gains can be made in environmental risk reduction by more vigorously enforcing existing statutes and regulations, particularly by employing innovative enforcement methods. Options include using statistical techniques for enforcement to assure that all classes of potential violators will be inspected, and assuring that penalties create an incentive to comply with environmental laws.

• Cooperation With Other Government Agencies and Nations

Many types of government policies affect the environmental problems that EPA must address. Due to EPA's limited jurisdiction, cooperation with other agencies and nations often presents the best opportunities to reduce certain kinds of environmental risk. For example, the Agency could seek an international convention on global warming and an agricultural policy that would reduce non-point source pollution.

Chapter Three—Recommendations

1. EPA Should Target Its Environmental Protection Efforts On The Basis Of Opportunities For The Greatest Risk Reduction

S-4.2

Seen in its historical context, the *ad hoc* development of U.S. national environmental policy is understandable. Yet 20 years of experience in developing and implementing environmental policy has demonstrated that not all environmental problems are equally serious, and not all remediation efforts are equally urgent. The nation cannot do everything at once. In national efforts to protect the environment, the most obvious steps have been taken to reduce the most obvious risks. *Now environmental priorities must be set.*

In order to set priorities for reducing environmental risks, EPA must weigh the relative risks posed by different environmental problems, determine if there are cost-effective opportunities for reducing those risks, and then identify the most cost-effective risk reduction options. This effort should build on the analytical process begun in *Unfinished Business* and in this report and its appendices.

However, the SAB recognizes that risk analyses always will be imperfect tools. No matter how much the data and methodologies are improved, EPA's decisions to direct specific actions at specific risks will entail a large measure of subjective judgment. Yet the SAB believes that relative risk data and risk assessment techniques should inform that judgment as much as possible. In short, EPA programs should be shaped and guided by the principle of relative risk reduction, and all available risk data and the most advanced risk assessment and comparison

methodologies should be incorporated explicitly into the Agency's decisionmaking process.

In order to implement a risk-based action agenda, EPA must take several essential steps. It must articulate to its own employees and to the general public the fact that it intends to set priorities for action based on opportunities for relative risk reduction. Next the Agency must establish an explicit process for incorporating those considerations into its long-term planning and budget processes. Finally, the Agency must act on those priorities.

In practice, of course, EPA's activities are defined by the laws that it is required to administer. EPA also has a responsibility to respond to public concerns about an environmental problem, no matter how limited the risk may seem to be. However, EPA should not limit its risk comparison efforts to those environmental problems it is required by law to mitigate. The risks posed by other problems and potential problems — like the loss of biological diversity — must be compared and ranked as well.

Simply stated, EPA is responsible for protecting the environment, not just for implementing environmental law. Thus the Agency should assess and compare the universe of environmental risks and then take the initiative to address the most serious risks, whether or not Agency action is required specifically by law.

2. EPA Should Attach As Much Importance To Reducing Ecological Risk As It Does To Reducing Human Health Risk

E-4.0

Largely because of the requirements of the laws it administers, EPA has tended to pay far more attention to protecting human health and welfare than to protecting the ecology. Indeed, during the 1980s EPA's agenda was dominated by concerns about the effects of toxic chemicals on human health.

Yet from the perspective of risk there are strong linkages between human health and the health of wetlands, forests, oceans, and estuaries. Most human activities that pose significant ecological risks — for example, the effects of agricultural activities on wetlands — pose direct or indirect human health risks as well. Likewise, actions taken to reduce pollution and thus improve human health usually improve various aspects of ecological quality.

These very close linkages between human health and ecological health should be reflected in national environmental policy. When EPA compares the risks posed by different environmental problems in order to set priorities for Agency action, the risks posed to ecological systems must be an important part of the equation.

This recommendation is not meant to imply the relative value of human life *vis a vis* plant or animal

life. Rather, it is meant to reflect in national environmental policy the very strong ties between all forms of life on this planet. Ecological systems like the atmosphere, oceans, and wetlands have a limited capacity for absorbing the environmental degradation caused by human activities. After that capacity is exceeded, it is only a matter of time before those ecosystems begin to deteriorate and human health and welfare begin to suffer.

In short, beyond their importance for protecting plant and animal life and preserving biodiversity, healthy ecosystems are a prerequisite to healthy humans and prosperous economies. Although ecological damage may not become apparent for years, society should not be blind to the fact that damage is occurring and the losses will be felt, sooner or later, by humans. Moreover, when species and habitat are depleted, ecological health may recover only with great difficulty, if recovery is possible at all.

Thus EPA's risk-based priorities for action should reflect an appropriate balance between ecological, human health, and welfare concerns. Furthermore, the Agency should communicate to the general public a clear message that it considers ecological risks to be just as serious as human health and welfare risks, because of the inherent value of ecological systems and their strong links to human health.

3. EPA Should Improve The Data And Analytical Methodologies That Support The Assessment, Comparison, And Reduction Of Different Environmental Risks

E-4.0 H-6.0
S-4.7

The ability to assess environmental risks, compare them, and select strategies to reduce them all depend on the availability and sophistication of the relevant data and analytical tools. The weakness in *Unfinished Business* stems in large part from the weakness of the data and analytical tools used, and those weaknesses still exist. If EPA's efforts to assess, compare, and reduce risks are to improve in the future, the data and analytical tools must improve as well.

For example, in order to generate the exposure-dose data needed to assess human health risks more reliably, EPA should monitor chemicals in the environment and in human tissues much more systematically. Biomarkers and other newly-developed measures of exposure should be used. To this end, EPA should expand its research and data collection efforts in this area, and cooperate with other Federal agencies to facilitate development of the requisite data bases.

EPA's health-related data collection efforts should not be limited to those areas where risks to human health already are recognized. EPA also needs to develop an ability to predict the potential future risks of emerging problems (e.g., low-level exposures to electromagnetic fields). Therefore, EPA should establish a formal risk-anticipation mechanism, including an in-house expert committee, peer oversight, and long-range research on emerging problems.

Improved methodologies for comparing different human health risks also are needed. A new approach to ranking risks, one that uses a matrix of data on sources, exposures, agents, and endpoints, is needed to help identify specific agents and mixtures for quantitative risk assessments. Risk rankings should be based on risk assessments for specific toxic agents, or definable mixtures of agents, and on the total human exposure to such agents. When possible, risks should be assigned to persons in target or more sensitive populations, as well as to the population as a whole.

For assessment of non-cancer human health risks, the Agency should try to establish a risk assessment framework consistent with that used for carcinogens. Furthermore, although a large number of non-cancer health endpoints exist, there is as yet no easy way to combine assessments of cancer and non-cancer risks into a single, overall health evaluation. The Agency should explore procedures to achieve this end.

Improved data bases and methodologies for assessing ecological and welfare risks also are needed. For example, although ecological data are plentiful, they have not been synthesized into formats useful for assessing ecological risk. Moreover, a substantial amount of ecological data are collected and maintained by other Federal government organizations. EPA should aggregate ecological data that are collected government-wide, and systematically synthesize those data into formats useful for ecological risk assessment.

Finally, all three RRRSC Subcommittees took initial steps in developing methodologies that would allow a more rigorous, scientifically defensible comparison and merging of environmental risks and alternative strategies for reducing them. Those methodologies are described in detail in the appendices to this report. EPA should invest in both in-house and extramural research to help improve those methodologies. *Unfinished Business* took the first steps to compare environmental risk; the appendices to this RRRSC report describe more sophisticated approaches. EPA should ensure that these ideas are developed and tested in the years ahead, so that relative risk reduction can be used as an effective, continually evolving tool in the development of national environmental policy.

4. EPA Should Reflect Risk-Based Priorities In Its Strategic Planning Processes

S-4.7

The Agency needs to build on and improve the kinds of analyses carried out by the authors of *Unfinished Business* and by the members of the RRRSC in the preparation of this report and its appendices. Ongoing assessments of different environmental risks and the policy options for reducing them should be carried out within EPA, but the Agency should consider soliciting the input of external groups and individuals with expertise and interest in this effort. The results of such analyses — the identification of relatively high-risk environmental problems and the most promising strategies for reducing them — then need to be incorporated explicitly into the Agency's strategic planning processes.

Recognizing that scientific understanding and public concerns are constantly evolving, EPA should update its risk-based priorities periodically. A major review of remaining and emerging environmental risks facing the nation — and the globe — should be conducted every several years in order to reflect advances in scientific knowledge and progress in mitigating environmental problems over time. Specific strategies for reducing specific environmental risks should be reviewed and updated more often.

Risk reduction strategies always should be driven by the environmental problems to be solved, not by the structure of existing government programs. Thus it is useful to analyze problems from different perspectives — for example, as pollutants (e.g., toxic air pollutants, groundwater pollutants), as sources (e.g., automobiles, powerplants), in terms of their effects (e.g., increased respiratory diseases, habitat destruction), and in terms of the economic activity causing or affecting them (e.g., energy use, transportation systems, residential and commercial development). Looking at environmental problems from different perspectives will suggest different

types of strategic solutions, and EPA should develop plans for specific risk reduction programs only after undertaking this kind of comprehensive, multi-faceted analysis.

The Agency should subject individual strategy options to disciplined analysis to determine how much risk reduction each will achieve. Information on cost, timing, degree of certainty of results, and ancillary benefits or risks should be included in such analyses. The decision matrix developed by the Strategic Options Subcommittee of the RRRSC represents one approach for evaluating alternative strategies against a set of defined criteria. After promising risk reduction strategies have been defined, they should be built into EPA's program plans in a coordinated and explicit way.

Since State governments generally implement national environmental protection policies at the local level, State agencies need to incorporate relative risk assessments into their strategic planning, too. EPA should encourage and support State efforts to assess relative risks and the various policy options available to reduce them, especially since local action is the most effective response to many environmental risks. EPA support should include financial resources, technical assistance, and information, and such support should be focused on those problems and geographical areas where particular risks are likely to be reduced the most, and in the most cost-effective ways.

5. EPA Should Reflect Risk-Based Priorities In Its Budget Process

S-4.8

Historically, EPA's budgets have reflected the resources necessary to establish and implement the regulatory programs mandated by Congress, with virtually no focus on relative risk and cost-effective opportunities for reducing relative risks. Accordingly, over time there has been little correlation between the relative risk of a particular environmental problem and the EPA budget resources dedicated to reducing it.

Spending by EPA is not — and should not be — the sole measure of society's response to a particular environmental problem. In fact, other Federal agencies, State and local governments, private companies, and individual families will have to play significant roles in reducing the risks posed by some environmental problems. However, among those environmental problems that clearly necessitate an EPA response, the Agency should shift its budget priorities toward those problems posing the greatest risks.

Although this change in budget priorities is a necessary component of future national environmental policy, such a change need not occur overnight. Small but consistent changes would accomplish the same objectives, and such changes should be made as the Agency's understanding of relative risks improves. Moreover, changes in EPA's budget priorities need not result in allocations exactly proportional to risk and risk reduction goals, since some risks can be reduced at relatively low cost.

The Agency should initiate a specific process for incorporating relative risk considerations into its budgetary deliberations. For example, at the beginning of the budget cycle the Administrator or Deputy Administrator of EPA could provide clear guidance to the program offices regarding relatively high-risk problems that appear to be relatively underfunded. A second review to ensure that relatively high-risk problems are given higher budget priority could be completed just before the budget is sent to the Office of Management and Budget. But whatever kind of process is instituted, it is critically important that a specific EPA administrative process relates budgetary allocations explicitly to risk.

Finally, the Agency should take the lead in ensuring that overall national efforts to reduce risks are driven by cost-effective risk reduction strategies. As activities by organizations outside EPA — at the Federal, State, and local levels — become increasingly important to the nation's risk reduction efforts, EPA should guide, inform, and help coordinate those efforts. As the Federal agency with the most up-to-date, comprehensive understanding of relative environmental risks and the options available for reducing them, EPA needs to play an active role in helping target national efforts to reduce environmental risks.

6. EPA—And The Nation As A Whole—Should Make Greater Use Of All The Tools Available To Reduce Risk

S-4.4

The main tool that this nation has used to reduce environmental risk has been government-mandated end-of-pipe controls and remediation or clean-up technologies. Such “command-and-control” methods for reducing risk have been very effective in controlling some kinds of pollution, especially from large, centralized sources. However, to control the risks posed by widely dispersed sources like naturally-occurring radon and some consumer products, and to control the risks that remain after the imposition of end-of-pipe technologies, command-and-control approaches may not be as effective. Consequently, other kinds of risk reduction tools that appear to have great promise must be used more extensively.

The RRRSC examined a variety of such tools, including research and development, conventional regulations, enforcement, and international cooperative activities. Two general tools that appear to hold particular promise are market incentives and the provision of information.

The forces of the marketplace can be a powerful tool for changing individual and institutional behavior and thus reducing some kinds of environmental risks. Whenever appropriate and feasible, EPA should use and/or support them. Marketable permits, deposit-refund systems, and pollution charges are types of market incentives that could — and should — play much larger roles in this nation’s efforts to reduce environmental risk.

EPA is only one of several Federal agencies with authority in these areas, but EPA is the Federal agency primarily responsible for protecting the environment in the broadest sense. Consequently, EPA should take the lead in fostering more widespread use of market forces to reduce environmental risk.

Information also can serve as a way to reduce risk without the use of command-and-control regulations. For example, the information requirements of the Emergency Planning and Community Right-to-Know Act of 1986 have encouraged companies to take voluntary actions to reduce their inventories and emissions of toxic substances. The exchange of information also can facilitate the wider use of cost-effective pollution prevention strategies. Information provided through environmental audits can help companies improve their risk-reduction efforts. EPA should expand its efforts to provide information and to facilitate information-sharing that helps individuals, businesses, and communities reduce environmental risk.

This recommendation is not meant to imply that command-and-control regulations have outlived their usefulness. For some environmental problems, conventional regulatory approaches hold substantial promise for further reductions in risk. Such approaches include end-of-pipe performance standards, design standards, use restrictions, and product specifications. Together with strict enforcement of existing environmental regulations, these approaches give pollution sources a strong incentive to look for cheaper, innovative ways to achieve the same environmental goals. Thus the RRRSC supports the continued use and strict enforcement of existing regulations.

However, the long-term reduction of environmental risks will require EPA, and the nation as a whole, to use a far broader range of tools. EPA should dedicate budget and personnel resources to develop, test, and fairly evaluate all such tools. The Agency also should make more of an effort to inform and encourage other elements of society — businesses, schools, State and local governments, etc.— to use this broad range of tools.

7. EPA Should Emphasize Pollution Prevention As The Preferred Option For Reducing Risk

S-43

The costs of cleaning up and disposing of pollutants after they have been generated can be enormous. The costs of the Superfund program, the planned cleanup of the Department of Energy's nuclear weapons plants, and the cancellation and disposal of chemicals already in use are painful examples of that lesson.

Thus end-of-pipe controls and waste disposal should be the last line of environmental defense, not the front line. Preventing pollution at the source — through the redesign of production processes, the substitution of less toxic production materials, the screening of new chemicals and technologies *before* they are introduced into commerce, energy and water conservation, the development of less-polluting transportation systems and farming practices, etc. — is usually a far cheaper, more effective way to reduce environmental risk, especially over the long term.

More widespread use of pollution prevention techniques holds enormous environmental and economic promise for a number of reasons. For one thing, some environmental problems — like global warming — simply cannot be remediated in any practical way using only end-of-pipe controls.

Pollution prevention also minimizes environmental problems that are caused through a variety of exposures. For example, substituting a non-toxic for a toxic agent reduces exposures to workers producing and using the agent at the same time as it reduces exposures through surface water, groundwater, and the air.

Pollution prevention also is preferable to end-of-pipe controls that often cause environmental problems of their own. Air pollutants captured in industrial smokestacks and deposited in landfills can contribute to groundwater pollution; stripping toxic chemicals out of groundwater, and combusting solid and hazardous wastes, can contribute to air

pollution. Pollution prevention techniques are especially promising because they do not move pollutants from one environmental medium to another, as is often the case with end-of-pipe controls. Rather, the pollutants are not generated in the first place.

The advantages of pollution prevention also are becoming apparent as the nation tries to address some of the environmental risks that remain after end-of-pipe controls are applied. Ongoing growth in the amount of wastes generated in this country is quickly overcoming the ability of landfills and incinerators to absorb it, especially since landfills are no longer an option for hazardous waste disposal. Society must find more ways to reduce the amount of waste requiring disposal. Similarly, as the nation attempts to reduce the environmental risks still posed by urban smog more than a decade after automobile emissions were reduced sharply by end-of-pipe technology, it is clear that preventing pollution — e.g., through mass transit, car pools, and the combustion of alternative fuels — is a promising long-term option.

In addition, pollution prevention techniques often bring substantial economic benefits to the sources that use them. Businesses can avoid the costs of end-of-pipe controls, waste cleanup and disposal, and liability by preventing pollution instead of controlling it. Moreover, some pollution prevention techniques, like using energy more efficiently and recycling process materials, can pay for themselves quite apart from environmental considerations. One reason that Japan and Western Europe are formidable economic competitors is that they use energy and raw materials so efficiently. To compete in the global marketplace, American businesses also must use them more efficiently.

8. EPA Should Increase Its Efforts To Integrate Environmental Considerations Into Broader Aspects Of Public Policy In As Fundamental A Manner As Are Economic Concerns

S-4.5; S-4.6

For the past 20 years EPA has been the focal point of the Federal government's environmental protection efforts. As such, EPA was largely responsible for defining, implementing, and enforcing the national command-and-control regulations that have been remarkably successful in reducing certain kinds of pollution, especially from large, centralized facilities.

But reducing environmental risk in the future also will entail the control of small, widely dispersed sources of pollution through the use of a wide range of regulatory and non-regulatory techniques. Consequently, EPA must have a broader perspective. In solving environmental problems like habitat destruction, indoor air pollution, non-point source water pollution, and solid waste disposal, EPA will be only one of a number of Federal and state agencies with important roles to play. Thus EPA should do more to foster the cooperation among government entities that will be essential to the national effort to reduce environmental risks in the 1990s and beyond.

EPA should play an important role in ensuring that environmental considerations are a part of the policy framework at other Federal agencies whose activities affect environmental quality directly or indirectly. Changing Federal policies in sectors not traditionally linked with environmental protection could provide cost-effective environmental benefits that equal or exceed those that can be achieved through more traditional means.

Environmental considerations should be an integral part of national policies that affect energy use, agriculture, taxation, transportation, housing, and foreign relations. For example:

- Energy conservation measures, if given high national priority, could improve the U.S. balance of payments, lower future world oil prices, reduce threats to national security, and help reduce environmental risks locally, regionally, and globally.
- Federal agricultural policies and programs could be revised to reduce or eliminate existing incentives for environmentally unsound farming practices, and to directly support efforts by farmers to control soil erosion and chemical runoff and to make greater use of low-input, sustainable farming practices.
- Tax policies could promote investments in new plants and equipment that are less polluting and more energy efficient.
- Housing and commercial development policies could be used to control development in ecologically fragile areas.

Because EPA is not the only Federal agency whose actions affect the environment, it must work to ensure that environmental considerations are incorporated into policy discussions across the Federal government. Environmental considerations should be as fundamental in this context as economic concerns are. In order to facilitate the government-wide integration of environmental policy, the EPA Administrator should encourage the President to create a cross-government forum where such integration would be explicitly considered and carried out.

9. EPA Should Work To Improve Public Understanding Of Environmental Risks And Train A Professional Workforce To Help Reduce Them

S-4.9

In a democracy the support of individual citizens is important to the success of any national endeavor. In the national effort to reduce environmental risk, such understanding and support is essential, because both the causes of and solutions to environmental problems are often linked to individual and societal choice. Consequently, EPA must expand its efforts to educate the public in general and the professional workforce in particular, both in terms of what causes environmental risks and what reduces them.

For example, EPA should work to reduce the gap between public perceptions of risk and the scientific understanding of risk. In many cases, public perception and scientific understanding are quite different, if only because scientists have ready access to information that the public does not. It is important that EPA increase its efforts to share risk information with the public, because in the long run the public will have to approve EPA's risk-based action agenda. Better public awareness of relative environmental risks will help the nation allocate its resources to maximize risk reduction.

At the same time the Agency must be attuned to the concerns of people who are closest to the real-world health, ecological, and welfare risks posed by different environmental problems. An engaged public often can be helpful in gathering information that supports the technical analysis of risk. Moreover, because they experience those risks first-hand, the public should have a substantial voice in establishing risk-reduction priorities.

Thus EPA should include broad public participation in its efforts to rank environmental risks. Such participation will help educate the public

about the technical aspects of environmental risks, and it will help educate the government about the subjective values that the public attaches to such risks. The result should be broader national support for risk-reduction policies that necessarily must be predicated on imperfect and evolving scientific understanding and subjective public opinion.

EPA also should take several specific steps to develop and sustain the nation's scientific capability and workforce. For example, the Agency should provide technical and financial assistance to universities to help them incorporate environmental subject matter into their curricula and to train the next generation of environmental scientists and engineers.

In this regard, EPA also should support graduate and post-graduate training programs in the relevant scientific disciplines, and nurture the participation of the scientific community in interdisciplinary research. The nation is facing a shortage of environmental scientists and engineers needed to cope with environmental problems today and in the future. Moreover, professionals today need continuing education and training to help them understand the complex control technologies and pollution prevention strategies needed to reduce environmental risks more effectively.

EPA also should expand its support for environmental training programs targeted at Federal, State, and local officials. Most environmental officials have been trained in a subset of environmental problems, such as air pollution, water pollution, or waste disposal. But they have not been trained to assess and respond to environmental problems in an integrated and comprehensive way. Moreover, few have been taught to anticipate and prevent pollution from occurring or to utilize risk reduction tools beyond command-and-control regulations. This narrow focus is not very effective in the face of the intermedia environmental problems that have emerged over the past two decades and that are projected for the future.

10. EPA Should Develop Improved Methods To Value Natural Resources And To Account For Long-Term Environmental Effects In Its Economic Analyses

E-5.2

Traditional forms of economic analysis, as applied to the costs and benefits of economic development and environmental protection, have systematically undervalued natural resources. This practice threatens the world's natural resources — like estuaries and rainforests — without which the lives of future generations will be impoverished. The failure of current analytic techniques to estimate properly either the full benefits of natural ecosystems or the full costs of activities that degrade them too often has allowed the justification of long-term ecological degradation for the sake of present gain.

A private company invests its profits to maintain and increase its capital value. When a company invests to maintain facilities, expand production, buy new equipment, and improve the quality of services provided, it protects its long-term health.

In a similar manner, this planet requires certain investments in order to maintain itself as a healthy ecosystem and to ensure sustainable, long-term economic growth. Future generations depend on those investments, and if they are not made, then civilization will put itself out of business.

It is necessary and appropriate to conduct economic analyses of human activities that affect the environment. But it is essential that such analyses properly value the long-term, sustained productivity of natural ecosystems. For that reason, EPA should undertake a broad national effort to develop analytical techniques that more adequately assess the real long-term value of ecosystems, and that support the identification of the most cost-effective ways to reduce risks that threaten long-term, sustained productivity.

There are a variety of problems with present methods. Many of the problems stem from the fact that public goods, such as clean air, are unpriced in markets and thus are easily — and often — undervalued in economic analyses. National accounting schemes typically characterize revenues generated by activities that deplete or degrade environmental resources as “income” while failing to consider the resulting depletion of society's environmental capital assets.

When economists do try to value ecosystems, they are hobbled by the limitations of the available tools. For instance, the “willingness to pay” method can significantly undervalue aspects of ecosystems with which people are not familiar. Some of the assumptions underlying discounting procedures do not hold when environmental effects occur over long time periods; thus they assign little value to some very important long-term effects. Multipliers that are applied differently to environmental values than they are to more traditionally measured economic values (e.g., employment) may further distort the results of economic analyses.

As a first step EPA should commission a study that surveys the ideas of ecologists, economists, social scientists, and other experts from inside and outside the Agency. The study should attempt to develop a way of incorporating ecological investments into a concept of sustainable growth.

Environmental economics is a controversial, complex, and rapidly-evolving field. EPA should take the lead in developing methods of analysis that will give fair consideration to investments that will protect the natural resource base for future generations.

This overview report has been derived mainly from three detailed reports prepared by the three Subcommittees of the Relative Risk Reduction Strategies Committee. Those reports are:

- Appendix A: *Report of the Ecology and Welfare Subcommittee*(EPA-SAB-EC-90-021A).

Includes a critique of the ecological and welfare rankings in *Unfinished Business*. Suggests an alternative approach to defining environmental problems, ranking them from an ecological perspective. Identifies a need to more accurately reflect ecological concerns in economic/welfare considerations.

- Appendix B: *Report of the Human Health Subcommittee*(EPA-SAB-EC-90-021B).

Includes a critique of the cancer and non-cancer rankings in *Unfinished Business*. Provides specific suggestions for methodological improvements for analyzing and evaluating relative risks of environmental problems, including a possible approach for merging cancer and non-cancer concerns.

- Appendix C: *Report of the Strategic Options Subcommittee*(EPA-SAB-EC-90-021C).

Describes the wide range of "tools" available for addressing environmental problems. Includes 60 examples of such strategic options applied to 13 different environmental problems. Provides a set of criteria for selecting from among the options in any given case.

Copies of the three appendices to this report can be obtained by writing:

The Science Advisory Board (A-101)
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Washington, D. C. 20460

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Chicago, IL 60604-3590

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Message

From: Reamy, Jeff [Jeffrey.M.Reamy@p66.com]
Sent: 4/24/2018 7:30:22 PM
To: Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]
Subject: Re: [EXTERNAL]EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

Mat be be something there fotvbuard,

Sent from my iPhone

On Apr 24, 2018, at 2:30 PM, EPA Press Office <press@epa.gov> wrote:



U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

**EPA Administrator Pruitt Proposes Rule To Strengthen Science Used
In EPA Regulations**

WASHINGTON (April 24, 2018) - Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.

“The era of secret science at EPA is coming to an end,” **said EPA Administrator Scott Pruitt.** “The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.”

This proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis”—a growing recognition that a significant proportion of published research may not be reproducible. The proposal is consistent with data access requirements for major scientific journals like *Science*, *Nature*, and *Proceedings of the National Academy of Sciences* as well as recommendations from the Bipartisan Policy Center’s *Science for Policy Project* and the Administrative Conference of the United States’ *Science in the Administrative Process Project*.

The proposed rule builds upon President Trump’s executive orders on regulatory reform and energy independence:

- ❖ **Executive Order 13777**, issued in March 2017, provides that regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.”
- ❖ **Executive Order 13783**, also issued in March 2017, provides that “It is the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Chairman Lamar Smith (R-TX): “Administrator Pruitt’s announcement ensures that data will be secret no more. For too long, the EPA has issued rules and regulations based on data that has been withheld from the American people. It’s likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas.”

Senator Mike Rounds (R-SD): “Sound, reliable science is vital to helping us make important policy decisions that impact the health of American families and their livelihoods. Inserting new levels of transparency in the EPA rulemaking process will help make the agency more accountable to the American people and help everyone understand the impact of EPA’s decisions. Today’s directive is a significant step toward making sure these decisions are not made behind closed doors with information accessible only to those writing the regulations, but rather in the full view of those who will be affected.”

Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts: “The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”

Dr. Louis Anthony (Tony) Cox, President, Cox Associates; Member, National Academy of Engineering; and Editor-in-Chief of the Journal *Risk Analysis*: “I believe that transparency and independent reproducibility of analyses and conclusions are bedrock principles of sound science. Some commentators have expressed concerns that making the data behind policy conclusions and recommendations accessible and transparent might threaten the privacy of individuals. But this concern can be fully met by applying current privacy-protection techniques for data analysis. These techniques have been developed and used successfully for years at the Census Bureau and elsewhere. Thus, we can have the scientific benefits of accessible data while protecting individual privacy.”

Dr. Jason Scott Johnston, Director, Olin Law and Economics Program, University of Virginia School of Law: “EPA’s proposed rule, Strengthening Transparency in Regulatory Science, is badly needed “Best practice among peer-edited scientific journals is to require that data and statistical routines used in published papers be posted online and/or made publicly available. To apply the same standards to research that EPA says justify regulations affecting billions of dollars in economic activity and millions of human lives is essential for those regulations to truly be scientifically based.”

Bruno Pigott, Commissioner of the Indiana Department of Environmental Management (IDEM): “IDEM supports transparency in rulemaking. Good, sound science leads to better regulations.”

Dr. George Wolff, Principal Scientist, Air Improvement Resource, Inc., and former Chairman of EPA’s Clean Air Scientific Advisory Committee (1992 - 1996): “In the development of regulations based on environmental studies, numerous subjective assumptions and choices must be made regarding the selection of data and models that have a profound impact on the strength of any statistical associations and even whether the associations are positive or negative. The appropriateness of the assumptions and choices are not adequately evaluated in the standard peer review process. That is why it is essential that the data and models be placed in the public domain for a more rigorous evaluation by qualified experts. The proposed regulation, Strengthening Transparency in Regulatory Science, will provide an opportunity for such evaluations.”

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Message

From: Tracey J. Norberg [tnorberg@ustires.org]
Sent: 7/12/2017 7:30:07 PM
To: Press [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]
Subject: RE: SUSAN BODINE NOMINATION MOVES TO SENATE FOR FULL CONSIDERATION

Good afternoon,

Please update my email address on this listserv.

Thank you so much!

Best regards,

TRACEY J. NORBERG
Senior Vice President & General Counsel
O: +1.202.682.4839 M: +1.202.294.9689
1400 K Street, NW #900 • Washington, DC 20005
@USTireAssoc • USTires.org



*****Please update your records! Our name, emails and domain have changed.*****

From: EPA Press Office [mailto:press=epa.gov@cmail20.com] **On Behalf Of** EPA Press Office
Sent: Wednesday, July 12, 2017 12:44 PM
To: TNorberg@RMA.org
Subject: SUSAN BODINE NOMINATION MOVES TO SENATE FOR FULL CONSIDERATION

Susan Bodine Nomination Moves To Senate For Full Consideration

WASHINGTON, D.C. (July 12, 2017) Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt applauded the U.S. Senate Environment and Public Works (EPW) Committee's vote in favor of Susan Bodine, nominee to be assistant administrator of the Office of Enforcement and Compliance Assurance (OECA) at EPA. Bodine's nomination now moves to the Senate for full consideration. Administrator Scott Pruitt released the following statement following this vote:

"Susan is highly qualified, with decades of experience having worked at EPA under the Bush Administration, and in both the House and Senate environmental committees. I look forward to her consideration before the full Senate and her eventual confirmation. I know Ms. Bodine will bring a pragmatic and principled perspective to the Agency."

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Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 8/2/2018 4:31:36 PM
To: kkdorr@sbgvtv.com
Subject: RE: CAFE Talkers
Attachments: CAFE Talking Points 8.2.2018.docx; ATT00001.htm

Attached talking points above. At the link below, you can also find some additional factsheets that are helpful in explaining the proposed rule.

<https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-and-affordable-fuel-efficient-vehicles-proposed>

From: Bishop, Bradley E. EOP/OMB [Ex. 6]
Sent: Thursday, August 2, 2018 10:12 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Wood, Jacob A. EOP/OMB [Ex. 6]
Subject: CAFE Talkers

Hey Michael,

I wanted to see if you have any talkers you can share for today's CAFÉ rule. We know DOT and EPA were leading the charge. Appreciate the consideration.

Thanks,

Brad Bishop
Deputy Press Secretary
Office of Management and Budget

(D) [Ex. 6]
(M)

The Safer Affordable Fuel-Efficient “SAFE” Vehicles Rule

The U.S. Department of Transportation (DOT) and Environmental Protection Agency (EPA) are announcing a joint-proposal (The Safer Affordable Fuel-Efficient “SAFE” Vehicles Rule) to address the current corporate average fuel economy (CAFE) and greenhouse gas emissions standards and provide more appropriate alternatives that balance economics (such as affordability, consumer choice, and safety), technology, energy conservation and pollution reduction.

What this is:

- A federal Notice of Proposed Rulemaking (NPRM) that asks for public comment and input on a variety of options to replace the 2012 standards.
- A proposal resulting from over one year of transparent, facts-based analysis performed by expert career staff using reliable data. The Agencies are seeking public feedback on both the findings and the scientific process.

What this isn't:

- A final rule or implementation of new regulations
- A “rollback” of fuel standards – fuel economy standards will continue to increase in the years ahead and no option in the proposal would lower them from today’s requirements.

Overview of the Proposed Rule

- EPA and DOT are jointly proposing a rule to establish fuel economy and greenhouse gas emissions standards for model years 2022-2026. In addition, the two agencies are proposing to modify fuel economy and greenhouse gas emissions standards for model year 2021.
- The proposed rule offers a range of options from a steep increase in fuel economy that would require the electrification of many new vehicles (the previous administration’s approach), to a less stringent option that preserves consumer choice, affordability and safety.
- Our goal is to get this right—to create one national standard that is technologically feasible and economically practicable, while promoting energy conservation, environmental goals, and preserving consumer choice.
- The Administration’s preferred option would lock in the 2020 standards until 2026, because the analysis of our agencies suggests that those standards strike the appropriate regulatory balance between vehicle improvements, environmental benefits, and safety.
- The joint proposal seeks comments on this range of options as well as compliance credits and related flexibilities.
 - The rule also seeks comments on technical matters such as the engineering methods available to improve fuel economy, the costs of re-engineered vehicles,

and the safety and other impacts of modifying the new car fleet to achieve each stringency option.

- Public comment will be sought for a period of 60 days once published in the Federal Register. In an effort to provide transparency for public review, both agencies will make available modeling, input files, technical supporting documents and other materials and will offer WebEx briefings and public hearings.
- The proposal represents continuity with the prior Administration's goal of achieving one national standard of fuel economy and vehicle greenhouse gas emissions regulations issued by EPA and NHTSA, and benefitting consumers by reducing the costs of compliance with separate or conflicting programs across states.

Background

- In 2010, The Environmental Protection Agency (EPA) and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) established a coordinated program for Federal standards for greenhouse gas (GHG) emissions and corporate average fuel economy (CAFE) for passenger cars and light-duty trucks.

In 2012, the two agencies issued a rule establishing fuel economy and emissions standards for Model Years 2017-2021, and in that same rule EPA (alone) also established emissions standards for Model Years 2022-25.

- This proposed rule seeks public comment on the next phase of that program, in which the two Agencies will establish stringency of the national standard for fuel economy and GHG emissions.
- This action meets the commitment made by the two Agencies in the 2012 rulemaking for EPA to conduct a Midterm Evaluation (MTE) of the GHG standards established for MYs 2022-2025. That Midterm Evaluation has been performed and the two agencies are proposing standards that reflect that evaluation as well as the most current information regarding emerging technology, consumer needs, prices, and the need of the nation to conserve energy.
- NHTSA must set the stringency at a level that is 'maximum feasible' considering:
 - Technological feasibility
 - Economic practicability
 - The effect of other motor vehicle standards of the Government on fuel economy, and
 - The need of the United States to conserve energy.

What are the Benefits?

NHTSA's proposed CAFE standards will save thousands of lives and deliver major economic benefits by modernizing the Nation's vehicle fleet and enabling Americans to afford cars and light trucks that on average are newer, safer, cleaner, and more fuel efficient.

- Revising the standards will result in **roughly \$500 billion** worth of economic benefits for the United States. It will be one of the largest regulatory reform measures in history and key to continuing our economic success.
- Already, the previous standards have helped drive up the cost of new automobiles to an average of \$35,000 or more—out of reach for many American families. Indeed, keeping in place the standards finalized in 2012 would add \$2,340 to the cost of owning a new car, and impose more than \$500 billion in regulatory costs on the U.S. economy.
- As a result, NHTSA estimates that the proposed new standards will save approximately half a trillion dollars in regulatory costs for the U.S. economy and will save approximately 12,700 lives over the lifetime of the vehicles covered by the new rules (well more than 1,000 lives saved per year).

How this differs from previous approach

- In the approach proposed in the last Administration, an ambitious path towards increasingly stringent standards was proposed. Because the standards are unlikely to be achieved in the real world, a complex system of credits was established so that vehicle fleets that could not meet the standards could use various credits and offsets to avoid enforcement of the stringent standards.
- The current proposal seeks to take a hard look at reducing reliance on complex credits and offsets and identify a level of stringency that can be achieved by safe, affordable vehicle fleets.
- The approach taken in the last Administration included a closed-door negotiation between automotive executives and politicians, resulting in a fuel economy target that did not take into account either consumer needs or American innovation in energy development. In contrast, this proposal provides for an open, public process that is based on facts and sound science, without back-room deals and secret negotiations.
- Consumers continue to demand new vehicles that will not meet the steep increase in stringency. The proposal seeks to allow consumers to choose vehicles that best meet their needs, including performance, safety and affordability.
- Furthermore, the proposed standards would improve the competitiveness of American manufacturing and job growth in a historically American industry – automotive transportation.

Next steps

- The proposal will be published in the Federal Register and public comments are solicited on all aspects of the rule. The 60-day public comment period allows comments to be submitted electronically to the docket.
- NHTSA and the EPA expect to issue the final rule this Winter.

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 12/12/2017 10:15:09 PM
To: jfredricks@pestworld.org
Subject: Contact info

Jim –

Want to drop you a line and make sure you have my contact info below.

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: Ex. 6 - Personal Privacy

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 12/14/2017 12:53:11 PM
To: mabboud@uschamber.com
Subject: Fwd: Administrator Pruitt Promotes Environmental Cooperation with U.S. Partners in Morocco

Sent from my iPhone

Begin forwarded message:

From: "EPA Press Office" <press@epa.gov>
Date: December 12, 2017 at 5:15:01 PM EST
To: "abboud.michael@epa.gov" <abboud.michael@epa.gov>
Subject: Administrator Pruitt Promotes Environmental Cooperation with U.S. Partners in Morocco
Reply-To: press@epa.gov



U.S. ENVIRONMENTAL PROTECTION AGENCY
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Administrator Pruitt Promotes Environmental Cooperation with U.S. Partners in Morocco

WASHINGTON (December 12, 2017) - U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt attended bilateral meetings in Morocco this week where he outlined U.S. environmental priorities for updating the Environmental Work Plan under the U.S.-Morocco Free Trade Agreement and the potential benefit of liquified natural gas (LNG) imports on Morocco's economy. This visit comes on the heels of an EPA-led workshop in Rabat that shared U.S. best practices for solid waste management, public participation and crisis communication pursuant to the former Environmental Work Plan.

"These meetings allowed us to directly convey our priorities and best practices with Moroccan leaders, as well as identify opportunities for continued cooperation, as our two countries further talks around the Environmental Work Plan," **said EPA Administrator Scott Pruitt.** "We are committed to working closely with countries like Morocco to enhance environmental stewardship around the world."

Administrator Pruitt met with Moroccan Secretary of State of Ministry of Foreign Affairs, Mounia Boucetta, where the two discussed the importance of continued collaboration between the two countries. Following the meeting with Secretary Boucetta, he met with the Moroccan Minister of Energy, Mines and Sustainable Development, Aziz Rabbah, to discuss new and ongoing areas of collaboration under the Free Trade Agreement and the country's interest in importing LNG.

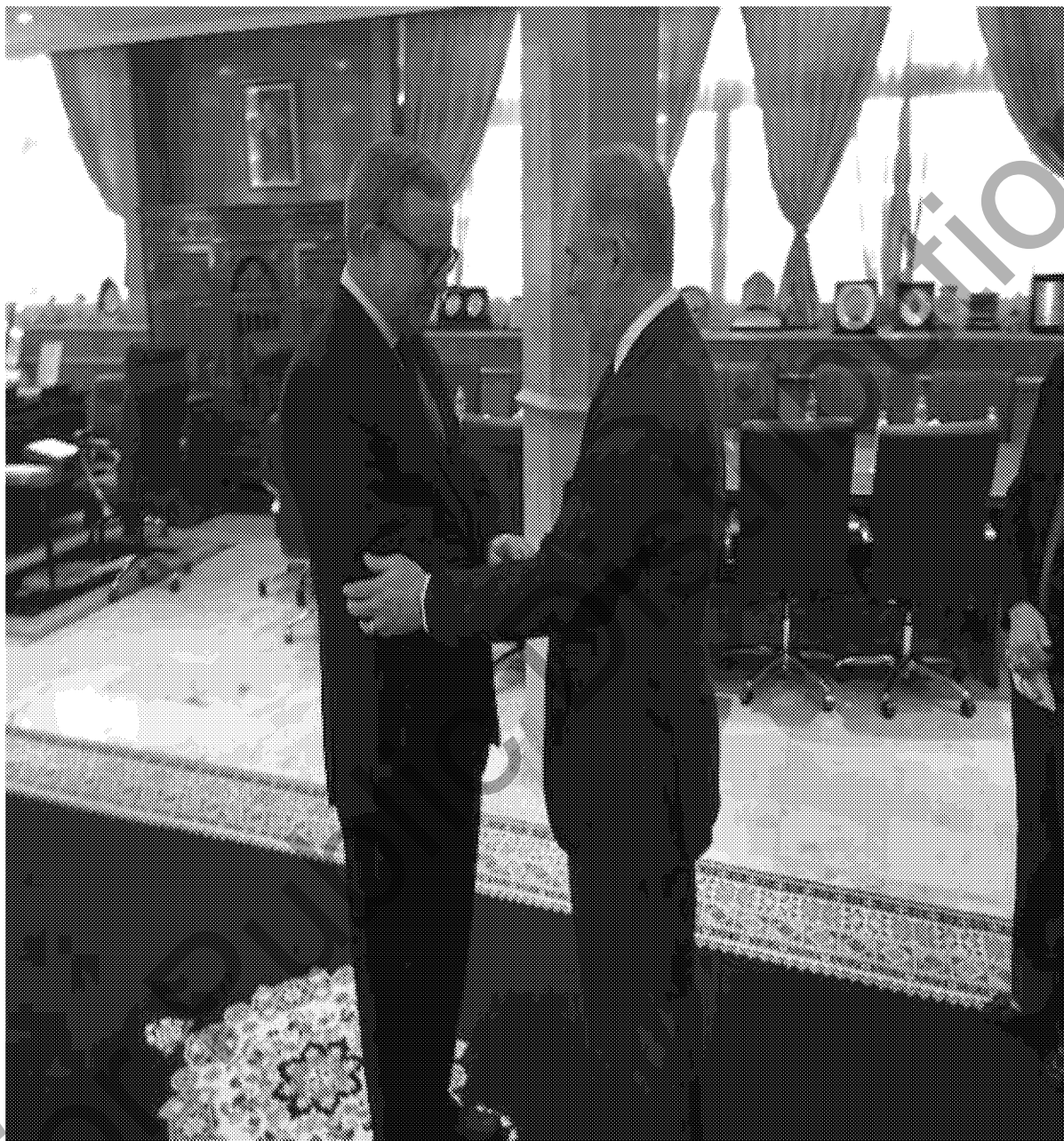
Also during the visit to Morocco, Administrator Pruitt met with Moroccan Minister of Justice and Liberties, Mohamed Aujjar. The two focused on the importance of adhering to rule of law and the ongoing strategic cooperation between the two countries. Administrator Pruitt also toured the IRESEN Green Energy Park, where he saw firsthand the work being done to promote environmental innovation including solar energy across Morocco.

Morocco is the only African country with which the U.S. has a free trade agreement. Administrator Pruitt is the first of President Trump's cabinet to visit Morocco, ensuring the Administration's environmental priorities are conveyed with our partners abroad and collaboration between the two countries is ongoing.



Administrator Pruitt and Secretary Boucetta pose for a photo after a discussion about the ongoing collaboration between the two countries.

Administrator Pruitt discussing the ongoing areas of collaboration with Minister Rabbah.



Administrator Pruitt was extended a warm welcome from Minister Aujjar during his visit to Morocco.



Administrator Pruitt and Minister Aujjar wrapping up a productive discussion around rule of law and strategic cooperation between the U.S. and Morocco.





Administrator Pruitt receiving a tour of the IRESEN Green Energy Park.

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Sent: 8/9/2017 8:06:29 PM
To: Kovacs, William [WKovacs@USChamber.com]
Subject: RE: Additional information

Thank you for this information Bill. It was great meeting you as well, and I'm sure we will be working together in the near future!

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: Ex. 6 - Personal Privacy

From: Kovacs, William [mailto:WKovacs@USChamber.com]
Sent: Wednesday, August 9, 2017 3:58 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Additional information
Importance: High

Michael:

It was a pleasure speaking with both of you today, thanks for coming over to the Chamber. There is some additional information that you might have interest in reading.

I have included last year's Senate testimony before HSGAC which specifically addressed the deficiencies in EPA's rulemakings. While it addresses procedures it also discusses how the deficiencies result in poor quality regulations. This one should be worth the read.

Also attached is a pdf of the Executive Summary of Administrator Reilly's "Reducing Risk: Setting Priorities and Strategies for Environmental Protection." One of the most thoughtful documents produced by EPA and worth a read.

Best wishes,

Bill Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062-2000

Ex. 6 - Personal Privacy

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 8/8/2017 2:09:57 PM
To: Kovacs, William [WKovacs@USChamber.com]
CC: Mike Abboud [mabboud15@gmail.com]; Engstrom, Rob [REngstrom@USChamber.com]; Weaver, Amy [AWeaver@USChamber.com]; French (King), Meredith [MFrench@USChamber.com]; Veillon, Justin [jveillon@USChamber.com]
Subject: Re: Hey

Sounds great. Look forward to meeting you then.

Sent from my iPhone

On Aug 8, 2017, at 9:41 AM, Kovacs, William <WKovacs@USChamber.com> wrote:

Mike:

Great, look forward to meeting with you tomorrow at 11:30 here at the Chamber.

Best wishes,

Bill

From: Abboud, Michael [mailto:abboud.michael@epa.gov]
Sent: Monday, August 07, 2017 5:07 PM
To: Kovacs, William
Cc: Mike Abboud; Engstrom, Rob; Weaver, Amy; French (King), Meredith; Veillon, Justin
Subject: Re: Hey

Just chatted with my boss and she's free from 11-2 on Wednesday. Could we shoot for 11:30am Wednesday. We could meet at the chamber if that's easiest.

Sent from my iPhone

On Aug 7, 2017, at 4:49 PM, Kovacs, William <WKovacs@USChamber.com> wrote:

Tomorrow (Tuesday) is fairly open so let's set 11 AM if you are free. Otherwise let's try Wednesday, just give me a time.

Bill Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062-2000

Ex. 6 - Personal Privacy

From: Mike Abboud [mailto:mabboud15@gmail.com]
Sent: Monday, August 07, 2017 4:26 PM

To: Engstrom, Rob
Cc: Kovacs, William; Weaver, Amy; French (King), Meredith; abboud.michael@epa.gov
Subject: Re: Hey

Thanks Rob.

Bill and Amy-

Would you guys have time to meet in the upcoming weeks to discuss a potential event to promote the new rule to end "sue and settle" practices? We were hoping to unveil the rule sometime in early September, so the sooner the better. Let me know what would work for you guys. Either email my work address (cc'd above) or give me a call at my phone number (listed below.)

Thanks

Michael Abboud

U.S. Environmental Protection Agency

Office of Public Affairs

M: Ex. 6 - Personal Privacy

On Mon, Aug 7, 2017 at 1:44 PM, Engstrom, Rob
<REngstrom@uschamber.com> wrote:

Mike,

Adding my colleagues Bill and Amy as this is their area of expertise. Bill is SVP for Environment, Technology and Reg Affairs and Amy manages coalitions and grassroots on Bill's team.

I'll let y'all take it from here. all best, R

From: Mike Abboud [<mailto:mabboud15@gmail.com>]
Sent: Monday, August 07, 2017 12:16 PM
To: Engstrom, Rob
Subject: Hey

Rob-

How have you been? I'm wanting to touch base with you and let you know I've started up at EPA in the public affairs office. If you are available sometime soon I would love to catch up over coffee or drinks? Let me know.

On another note, at the EPA were working on promoting a new rule next month which will help with "sue and settle" practices. We discussed doing an event with the chamber to promote the rule. Do you know who we could get in contact at the chamber to discuss setting something up?

Hope all is well

Mike

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